

# LAW AND THEOLOGY IN TWELFTH-CENTURY ENGLAND

THE WORKS OF MASTER VACARIUS  
(c. 1115/20-c. 1200)



JASON TALIADOROS

BREPOLS



LAW AND THEOLOGY IN  
TWELFTH-CENTURY ENGLAND

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TWELFTH-CENTURY ENGLAND

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by

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## ABBREVIATIONS

<i>Code</i>	<i>Codex Iustinianus</i> , in <i>Corpus iuris civilis</i> , ed. by Paul Krüger and others, 3 vols (Berlin: Weidmann, 1877–95; repr. 1967–73), II, ed. by Paul Krüger (1877)
CSEL	<i>Corpus scriptorum ecclesiasticorum latinorum</i> (Vienna: F. Tempsky, and various imprints, 1866–).
<i>Decretum</i>	<i>Decretum magistri Gratiani</i> , in <i>Corpus iuris canonici</i> , ed. by Emil Friedberg and A. L. Richter, 2 vols (Leipzig: Bernhard Tauchnitz, 1879–81; repr. Graz: Akademische Druck- u. Verlagsanstalt, 1959), I (1879)
<i>Digest</i>	<i>Digesta</i> , in <i>Corpus iuris civilis</i> , ed. by Paul Krüger and others, 3 vols (Berlin: Weidmann, 1877–95; repr. Berlin, 1967–73), I, ed. by Theodor Mommsen (1877)
<i>Institutes</i>	<i>Institutiones</i> , in <i>Corpus iuris civilis</i> , ed. by Paul Krüger and others, 3 vols (Berlin: Weidmann, 1877–95; repr. Berlin, 1967–73), I, ed. by Paul Krüger (1877)
JL	<i>Regesta pontificum Romanorum ab condita ecclesia ad annum post Christum natum MCXCVIII</i> , ed. by P. Jaffé and others, 2 vols (Leipzig: Veit, 1885–88; repr. Graz: Akademische Druck- u. Verlagsanstalt, 1956)
MGH	<i>Monumenta Germaniae Historica</i> (Hannover: Hahn [imprint varies], 1828–)
PL	<i>Patrologiae cursus completus, series latina</i> , ed. by Jacques-Paul Migne, 221 vols (Paris: J.- P. Migne, 1844–64)

- RS                      Rolls Series: *Rerum Britannicarum Medii Aevi Scriptores*, or, *Chronicles and Memorials of Great Britain and Ireland during the Middle Ages*, published [. . .] under the direction of the Master of Rolls, 99 vols (London: Longman, 1858–96)
- X                        *Decretales Gregorii IX*, in *Corpus iuris canonici* (= *Liber extra*), ed. by Emil Friedberg and A. L. Richter, 2 vols (Leipzig: Bernhard Tauchnitz, 1879–81; repr. Graz: Akademische Druck- u. Verlagsanstalt, 1959), II (1881)

## INTRODUCTION

The figure of Master Vacarius is no more than a shadow among the luminaries of the so-called twelfth-century renaissance. This is surprising given his centrality in the three great innovative developments of the twelfth century: the origins of the university, the rebirth in law and legal science, and the development of systematic theology from biblical exegesis. Vacarius's reputation, by means of his *Liber pauperum*, as one of the first glossators of the renewed science of Roman law in the twelfth century and the pioneer of that reborn science in England, is well-documented. Less well known and understood, however, is his remaining literary output, namely his works on marriage, christology, and sacramental matters — subject matter difficult to reconcile with his legal background.

It is perhaps the difficulty of following Vacarius into these various areas of interest, namely Roman law, canon law, theology, exegesis, logic, and philosophy, that has prevented any single, comprehensive study on this man and his intellectual output. The essential challenge which this book seeks to overcome is the lack of a cogent explanation for this Italian jurist's multidisciplinary. Whether it is the quest to solve the perplexed issue of this apparent contradiction in Vacarius, or the complexity, subtlety, and ambiguity of the works themselves, this study shares its aim with that medieval author: the desire for truth.

It will seek to achieve this by a close reading of the works, and therefore the thought, of Master Vacarius. By illustrating points of commonality and comparison with external as well as internal contexts, this book will examine the thought of Vacarius as a man of the twelfth century. These works reveal four strands to Vacarius's thought: teaching law, marriage, christology, and sacramental issues. Although ostensibly beyond the realm of law, his treatment

of these topics both employed it and went beyond it. For that reason, I call his works outside the *Liber pauperum* his supra-legal works.

There is possibly a simpler explanation: like many of us, Vacarius is a person of contradictions, a person grappling with his second ‘voice’. It is just these contradictions that make history, and life, richer.

### *Biography: A Twelfth-century Life*

Master Vacarius was a man of the twelfth century. He was born *c.* 1115/1120, probably in Lombardy, the region in northern Italy dominated by the River Po and bordered by the Alps to the north and the Appenines to the south. He is described by Robert of Torigny as being from the Lombard region, a *gente Longobardus*.<sup>1</sup>

From the 1130s up to the early 1140s he studied Roman law in Lombardy, most likely at the Bolognese school. Beginning with Mauro Sarti, the historiography has unanimously affirmed that Vacarius was educated at Bologna.<sup>2</sup> Scholars have assumed that Vacarius received instruction at Bologna at this time, when the ‘Four Doctors’ — all students of Irnerius (d. 1130) — taught there; these four were Bulgarus (d. 1166?), Martinus Gosia (d. *c.* 1160), Jacobus (d. 1178), and Ugo de Porta Ravennate (d. *c.* 1166/1171). There are no sources positively attesting to this, although the Bolognese school was renowned in the mid-twelfth century as a centre for both canon and Roman law studies, and by the 1130s it had an established school of legal studies. But the absence of

<sup>1</sup> Robert of Torigny, *Chronicle*, in *Chronicles of the Reigns of Stephen, Henry II and Richard I*, ed. by R. Howlett, RS: 82, 4 vols (London: Longman, 1884–89), IV, pp. 81–315 (p. 158); cf. Robert of Torigny, *Chronique*, in *Chronique de Robert de Torigny. Abbé du Mont-Saint-Michel, suivie, de divers opuscules historiques de cet auteur*, ed. by L. Delisle, Société de l’Histoire de Normandie, 2 vols (Rouen: A. Le Brument, Le Librairie de la Société de l’Histoire de Normandie, 1872–73), I, p. 248–51. Robert of Torigny (*c.* 1110–86; also known as Robert of Torigni; Robertus de Torinneio; Robertus de Monte; Robertus Abbatas) wrote this chronicle of the world (also called *Roberti accessiones ad Sigerbertum*) as additions to Sigebert of Gembloux’s *Chronicle* or *History of the World*, which ceased at the end of 1112. This birth date of 1115 or 1120 was suggested by F. Liebermann, ‘Magister Vacarius’, *English Historical Review*, 11 (1896), 305–14 (p. 305). See also Stein, who suggested a date of 1120: Peter Stein, ‘Vacarius and the Civil Law in England’, in *The Teaching of Roman Law in England around 1200*, ed. by Francis De Zulueta and Peter Stein (London: Selden Society, 1990), pp. xxii–xxvii (p. xxii).

<sup>2</sup> Mauro Sarti and M. Fattorini, *De claris archigymnasii Bononiensis professoribus a saeculo XI usque ad saeculum XIV*, 2 vols (Bologna: Merlani, 1888–96), I, p. 51.

any 'Vacarian' glosses in manuscripts of texts from the Bolognese school makes any such attribution uncertain. Further, there is evidence for 'minor' schools of law existing in Italy at this time, such as that at Pavia.<sup>3</sup>

Vacarius was a 'master' when he arrived in England, according to Robert of Torigny's description of him as *magister Vacarius*.<sup>4</sup> This was sometime between 1143 and 1149, when he came to work in the household of Theobald, Archbishop of Canterbury. Robert of Torigny relates that Vacarius had come to England by 1149, although Gervase connects Vacarius's arrival in England sometime earlier than this, specifically with his being summoned on account of the controversy begun in 1144 between Theobald of Canterbury and Henry of Winchester, concerning which of the two men should have the status of legate.<sup>5</sup> Although civilian by training, it seems that Vacarius had also acquired the basics of canon law, probably from Gratian and his circle at Bologna in the 1130s. For why else would Theobald have engaged his services in relation to the 'hitherto unheard of grave disorders, lawsuits, and appeals' which had come about when Theobald appealed to Pope Gelasius II (September 1143–March 1144) for the removal of Henry, bishop of Winchester and brother to King Stephen, as papal legate to

<sup>3</sup> Ennio Cortese, 'Alle origine della scuola di Bologna', *Rivista internazionale de diritto commune*, 4 (1993), 7–49; Ennio Cortese, *Il rinascimento giuridico medievale*, 2nd edn (Rome: Bulzoni, 1992), pp. 25–53; Anders Winroth, 'Origins of Legal Education in Medieval Europe', paper presented to the University of Southern California, Center for Law, History, and Culture, 8 March 2006, available from <[http://law.usc.edu/academics/centres/clhc/archives/workshops/spring\\_06.html](http://law.usc.edu/academics/centres/clhc/archives/workshops/spring_06.html)> [accessed 11 July 2006], pp. 1–27 (p. 13), citing Jean Dufour, Gérard Giordanengo, and André Gouron, 'L'attrait des "leges". Note sur la lettre d'un moine victorin (vers 1124/1137)', *Studia et document historiae et iuris*, 45 (1979), 504–29 (pp. 528–29; letter from a monk in the twelfth century referring to his studies in law at Pavia).

<sup>4</sup> Robert of Torigny, *Chronicles*, ed. by Howlett, IV, p. 158; see also *Chronique*, ed. by Delisle, I, pp. 248–51. In addition, De Zulueta noted a number of Vacarius's opinions quoted outside the manuscripts of the *Liber pauperum*, namely two in Bulgarus's *De regulis iuris* and three in Hugolinus's *Dissensione*: see Francis De Zulueta's introduction to his book, *The Liber pauperum of Vacarius* (London: Selden Society, 1927), p. xxii. Southern believed that the common connection of the three jurists was Bologna and so believed that the opinions went back to Vacarius's days as a master at Bologna: Richard W. Southern, 'Master Vacarius and the Beginning of an English Academic Tradition', in *Medieval Learning and Literature: Essays Presented to R. W. Hunt*, ed. by J. J. G. Alexander and M. T. Gibson (Oxford: Clarendon Press, 1976), pp. 257–86 (p. 262, n. 1).

<sup>5</sup> Robert of Torigny, *Chronicles*, ed. by Howlett, IV, p. 158; *Chronique*, ed. by Delisle, I, pp. 248–51; cf. Gervase of Canterbury, *The Historical Works of Gervase of Canterbury*, ed. by William Stubbs, RS: 73, 2 vols (London: Longman, 1879–80), II, p. 384.

England, and for the appointment of himself instead?<sup>6</sup> The legatine problem was a canonical more than a Roman law issue.

In this regard, we should note the comments of John of Salisbury, by way of preface to his remarks about Stephen and Vacarius, that he knew of people who ‘consign[ed] the books of the laws to the fire; and if they were able to get their hands on the laws *or the canons*, would not hesitate to tear them up’.<sup>7</sup> Although ostensibly non-academic, Vacarius’s role in the households of the archbishops of Canterbury and later York may well have entailed him teaching law and grammar, both in the cathedral school as well as individually to other masters and students linked with those centres.<sup>8</sup> This earlier date of 1144 therefore seems the more likely, as such a situation would no doubt have required someone of Vacarius’s training. Southern posits the date of 1143 for Vacarius’s arrival on just this basis.<sup>9</sup> In any event, Vacarius was already in the household of Theobald by 1154, as he witnessed a judgment by the archbishop in 1150–54, and John of Salisbury, writing in 1159, called him *nostro Vacario* (‘our Vacarius’).<sup>10</sup>

At some time during his stay in England he took holy orders. He calls himself a *clericus* in one of his later works.<sup>11</sup> Although *clericus* could often refer to the purely secular meaning of ‘clerk’, Da Milano has convincingly argued that

<sup>6</sup> Gervase of Canterbury, *The Historical Works*, ed. by Stubbs, II, pp. 384–85, cited in Leonard E. Boyle, ‘The Beginnings of Legal Studies at Oxford’, *Viator*, 14 (1983), 107–31 (p. 115).

<sup>7</sup> ‘... si in manus eorum iura pervenirent aut canones’: John of Salisbury, *Policraticus*, in *Iohanni Saresberiensis Episcopi Carnotensis Policratici*, ed. by C. C. J. Webb, 2 vols (Oxford: Clarendon Press, 1909), II, pp. 398–99.

<sup>8</sup> See Chapter 1, below, on Vacarius’s legal teaching. See also Liebermann, ‘Magister Vacarius’, p. 308; William Stubbs, *Seventeen Lectures on the Study of Medieval and Modern History and Kindred Subjects. Delivered at Oxford under the Statutory Obligation in the Years 1867–1884* (Oxford: Clarendon Press, 1887), p. 142.

<sup>9</sup> Southern, ‘Master Vacarius’, p. 280.

<sup>10</sup> Avrom Saltman, *Theobald, Archbishop of Canterbury* (London: Athlone, 1956), p. 242; John of Salisbury, *Policraticus*, ed. by Webb, II, pp. 398–99.

<sup>11</sup> In his *Liber contra* he referred to *nos clericos* in the following passage: ‘Et tu indignaris quod nos dies Dominicos et festivitates omnium sanctorum celebramus; in quibus maxime nos clerici die noctue versari debemus psallendo Domino, sicut docet Apostolus, *in psalmis et hymnis et canticis*’: Vacarius, *Liber contra multiplices et varios errores*, §27 [2], in *L’Eresia di Ugo Speroni nella confutazione del Maestro Vacario: Testo inedito del secolo XII con studio storico e dottrinale*, ed. by Ilarino Da Milano, Studi e Testi, 115 (Vatican City: Biblioteca Apostolica Vaticana, 1945), pp. 471–583 (p. 554). Hereafter the text will be cited as ‘*Liber contra*’ and the commentary as ‘*L’Eresia di Ugo Speroni*, ed. by Da Milano’.



Vacarius used *clericus* in its strict sense to mean ‘ordained priest’.<sup>12</sup> In addition, whilst in Theobald’s household, Vacarius was referred to as *clericus archiepiscopi* in a document he witnessed between 1150–61, further confirming the fact that he was an ordained priest.<sup>13</sup> Later, Vacarius was awarded a prebend, a reward more likely with the status of an ordained priest. As part of a more spiritual period in his life, he travelled to France in 1148–49, as part of his ecclesiastical duties for the Archbishop of Canterbury. There, he attended the Council of Reims, where, among other things, the bishops questioned the orthodoxy of Gilbert of Poitiers’s commentaries on Boethius.<sup>14</sup>

His ecclesiastical career took him to the north of England in 1159, where he worked in the household of Roger, Archbishop of York, until the latter’s death in 1181.<sup>15</sup> Roger had previously held a post as archdeacon of Canterbury, and so Vacarius knew him and decided to transfer to his service. It was in England, during his time as a clerical official, that Vacarius composed his works. His most famous text, composed after 1149 and as late as the thirteenth century, is the *Liber pauperum*, a vade-mecum for English students wishing to learn Roman law.<sup>16</sup> Through this work, Vacarius achieved fame for introducing glossatorial learning, or the renewed study of Roman law, into England for the first time.<sup>17</sup>

<sup>12</sup> *L’Eresia di Ugo Speroni*, ed. by Da Milano, pp. 84–85. See below, in Chapter 4; cf. *Liber contra*, §§28–29, pp. 557–62.

<sup>13</sup> Beatrice A. Lees, *Records of the Templars in England in the Twelfth Century: The Inquest of 1185 with Illustrative Charters and Documents* (London: Oxford University Press, 1935), pp. 237–38.

<sup>14</sup> John of Salisbury, *Iohannis Saresberiensis Historia Pontificalis quae supersunt*, ed. by Reginald L. Poole (Oxford: Clarendon Press, 1927), p. 17. See Massimiliano Guareschi, ‘Gli incontri di un canonico legista: Magister Vacarius teologo e polemista’, *Rivista di storia e letteratura religiosa*, 36 (2000), 381–414 (p. 400).

<sup>15</sup> In 1159 Vacarius witnessed a confirmation in favour of the monks of Pontefract when their church was consecrated: *Early Yorkshire Charters, being a Collection of Documents Anterior to the Thirteenth Century, made from the Public Records, Monastic Chartularies, Roger Dodsworth’s Manuscripts and Other Available Sources*, ed. by William T. Farrer and others, 13 vols (Edinburgh: Ballantyne, 1914–16), III, p. 173, no. 1477.

<sup>16</sup> Vacarius, *Liber pauperum*, in *The Liber pauperum*, ed. by De Zulueta, pp. 1–300. For the controversy on the dating of this work, see Chapter 1, below.

<sup>17</sup> On the glossators, see Peter Weimar, ‘Die legistische Literatur der Glossatorenzeit’, in *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, ed. by Helmut Coing (Munich: Beck, 1973), pp. 129–260 (pp. 252–53); Hermann Lange, *Römisches Recht im Mittelalter*, I: *Die Glossatoren* (Munich: Beck, 1997), pp. 129–258.

The *Liber pauperum* is also linked with his possibly being a teacher at Oxford some time between 1149 and the 1190s. He also composed several other works: between 1150 and 1178 he composed the *Tractatus de assumpto homine*, a tract on christology.<sup>18</sup> Then, between 1156 and 1179 he composed the *Summa de matrimonio*, on marriage.<sup>19</sup>

During this time with Roger he again travelled to France; there is evidence for Vacarius being in Paris as a messenger for Roger in 1164.<sup>20</sup> This was not long after the conciliar debate at Tours in 1163, presided over by Pope Alexander III, who considered the christological proposition that Christ as man was not 'something' (*aliquid*). The fact that Roger of York was in attendance at this council makes Vacarius's presence even more likely.<sup>21</sup>

Vacarius found financial security during his time in Roger's employment when, between 1164 and 1167, he was made secular canon of the collegiate church at Southwell, part of which included the prebend of Norwell.<sup>22</sup> This may explain why he never returned to his native Lombardy in his later years. He travelled to France, possibly for the third time since his arrival in England, in 1171, this time as a compurgator for Roger of York in Normandy in the aftermath of the Becket martyrdom in 1170.<sup>23</sup> This period in France also coincided with the decretals of Alexander III concerning the continuing christological controversy as to whether Christ as man was *aliquid*. That Vacarius was aware of these debates, and, moreover, a trusted confidante of Pope Alexander III, is suggested by his being

<sup>18</sup> Vacarius, *Tractatus de assumpto homine*, in 'The "Tractatus De Assumpto Homine" by Magister Vacarius', ed. by Nikolaus M. Häring, *Mediaeval Studies*, 21 (1959), 62–75 (text), 147–61 (commentary).

<sup>19</sup> Vacarius, *Summa de matrimonio*, in 'Magistri Vacarii Summa De Matrimonio', ed. by Frederic William Maitland, *Law Quarterly Review*, 13 (1897), 133–42 (commentary), 270–87 (text).

<sup>20</sup> *Materials for the History of Thomas Becket, Archbishop of Canterbury*, ed. by J. C. Robertson and J. B. Sheppard, RS: 67, 7 vols (London: Longman, 1875–85), v, p. 117.

<sup>21</sup> Robert Somerville, *Pope Alexander III and the Council of Tours (1163). A Study of Ecclesiastical Politics and Institutions in the Twelfth Century* (Berkeley: University of California Press, 1977), p. 14.

<sup>22</sup> Liebermann, 'Master Vacarius', p. 312. Vacarius held the prebend of Norwell at least until 1191–94 when he donated half of it to his nephew Reginald: *Liber Albus* of Southwell, in *Visitations and Memorials of Southwell Minster*, ed. by Arthur F. Leach, Camden Society Publications, n.s., 48 (London: Camden Society, 1841), pp. 49–50; also cited in Southern, 'Master Vacarius', p. 260, n. 2.

<sup>23</sup> *Materials*, ed. by Robertson and Sheppard, vii, p. 500.

appointed papal judge delegate on seven occasions between 1176 and 1180.<sup>24</sup> In addition, before he became pope, Rolandus Bandinelli (not to be confused with the eminent canonist Master Roland) received instruction in law at Bologna, possibly at the same time as Vacarius.<sup>25</sup> Roger's recommendation of Vacarius for such a role also indicated the archbishop's level of trust and esteem for the Italian jurist.

This period in the 1170s or 1180s also saw the composition by Vacarius of a work called the *Liber contra multiplices et varios errores*, a treatise rejecting the theological and sacramental errors of a friend, Hugo Speroni.<sup>26</sup> Hugo was another figure with whom Vacarius had studied 'in the schools', no doubt Bologna.<sup>27</sup> Like Vacarius, Hugo was a trained civilian, or Roman lawyer, and had held office as consul in Piacenza for periods in 1165–67.<sup>28</sup>

The Vacarian-inspired *Lectura ad Institutiones*, a lecture course on the introductory text to the *Institutes* of Roman law, appeared some time after 1175 and most likely in the 1190s. The *Lectura*, although of Vacarian influence, was not composed by the master himself. Stein has argued that it was composed some time after the *Liber pauperum*, since its readers were expected to have before them a copy of Vacarius's *Liber pauperum*. The 1180s coincided with a

<sup>24</sup> Vacarius's first recorded activity as papal judge delegate was on 24 March 1176, with Gregory regarding the prior of Bridlington: *Early Yorkshire Charters*, ed. by Farrer and others, with index to vols 1–3, and 4–12 ed. by Charles T. Clay in *The Yorkshire Archaeological Society Record Series*, Extra Series, vols 1–10 (1935–65); 9 (1952), p. 176, no. 241; *Charters of the Honour of Mowbray 1107–1191*, ed. by D. A. Greenway (London: Oxford University Press, 1972), p. 212. His last recorded activity was in c. 1180, in arbitration between Burlington Priory and Welbeck Abbey regarding the churches of Whitton and Roston: Oxford, Bodleian Library, MS Harley 3640, fol. 125. The documentary evidence is summarized and cited in the appendix of Southern, 'Master Vacarius', pp. 282–86.

<sup>25</sup> Rolandus Bandinelli and Alexander III have long been mistakenly identified with the canonist Rolandus of Bologna, author of the *Stroma* or *Summa* and *Sentences*: John T. Noonan, 'Who was Rolandus?', in *Law, Church, and Society: Essays in Honour of Stephan Kuttner*, ed. by Kenneth Pennington and Robert Somerville (Philadelphia: University of Pennsylvania Press, 1977), pp. 21–48.

<sup>26</sup> *Liber contra*; see Chapter 4 below.

<sup>27</sup> 'Nolo te credere me oblivioni tradidisse fraternam societatis et familiaritatis dilectionem, que tanta invicem inter nos fuit in scolis': *Liber contra*, Prologue [A], p. 475.

<sup>28</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, pp. 44–45.

period when a 'Vacarian school' flourished in England, with contemporaries referring to those who studied the *Liber Pauperum, pauperistae*.<sup>29</sup>

Vacarius travelled to France for the fourth time at some point between 1177 and 1186, where he was present in Rouen.<sup>30</sup> During this trip he was still in employment at the household of York under Roger. On the latter's death in 1189, however, he continued in his role there under the new archbishop Geoffrey Plantagenet.<sup>31</sup> His last-recorded public act took place in 1198, when he preached the Third Crusade at York, under instruction by Pope Innocent III,<sup>32</sup> before his life came to an end in around 1200.

Vacarius's life lasted for all but a few decades of the twelfth century; he was quite literally a man of that century. His activities as teacher, lawyer, bureaucrat, papal judge delegate, theologian, cleric, and writer demand, therefore, an assessment of his role within the twelfth-century 'renaissance'.<sup>33</sup> Haskins, the first scholar to popularize this concept, saw the twelfth century as the locus for a revival of the Greco-Roman classical tradition in medieval intellectual thought, particularly in the area of literature.<sup>34</sup> Significantly, he included philosophy, Roman law, and the development of the universities as major contributors to this movement. Less prominent in his account, however, were canon law, logic, and developments in theology. For him, Gratian's treatise was a mere application of

<sup>29</sup> See the contemporary accounts set out in Stein's introduction to *The Teaching of Roman Law*, ed. by De Zulueta and Stein, pp. xxxiv–xxxv.

<sup>30</sup> Vacarius witnessed a grant at Rouen to the royal clerk, Roger of Warwick: *The Lay Folks' Mass Book*, ed. by T. F. Simmons, Early English Text Society, o.s., 71 (London: Trübner, 1879), pp. xlv–xlvii; Liebermann, 'Magister Vacarius', p. 313, n. 70.

<sup>31</sup> In 1191–93/1194 Geoffrey confirmed a gift by Vacarius, of one half of his prebend at Norwell to his nephew Reginald: *Liber Albus* of Southwell, in *Visitations*, ed. by Leach, pp. 49–50, cited in Southern, 'Master Vacarius', p. 283. After 1195 Vacarius wrote a letter to Geoffrey, reporting on the canons of Welbeck: Oxford, Bodleian Library, MS Harley 3640, fol. 128'. The text appears in Southern, 'Master Vacarius', p. 286, text no. 1.

<sup>32</sup> Roger of Hoveden, *Chronica Magistri Rogeri de Hoveden*, ed. by William Stubbs, RS: 51, 4 vols (London: Longman, 1868–71), IV, p. 75.

<sup>33</sup> For a recent survey of the concept of the 'Twelfth-Century Renaissance', see R. N. Swanson, *The Twelfth-Century Renaissance* (Manchester: Manchester University Press, 1999), pp. 1–11; Marcia L. Colish, 'Haskins' Renaissance Seventy Years Later: Beyond Anti-Burckhardtianism', *The Haskins Society Journal*, 11 (2003), 1–29. I am grateful to Professor Colish for making available to me the latter article prior to publication.

<sup>34</sup> Charles Homer Haskins, *The Renaissance of the Twelfth Century* (Cambridge, MA: Harvard University Press, 1927; repr. New York: Meridian Books, 1957).

Roman law texts to ‘other bodies of law’, while the new developments in theology he also dismissed as merely part of the changes in philosophy and Aristotelian logic, without considering its more speculative nature.<sup>35</sup> It is in all of these areas that Vacarius’s contribution can be seen.

This study, by focussing on the works of Vacarius, will assess his intellectual contribution to developments in the twelfth century. The men to whom Vacarius was confidant and friend, such as John of Salisbury, Thomas Becket, Roger of York, Gilbert of Foliot, Gerard Pucelle, and Theobald of Canterbury, have traditionally informed our view of twelfth-century intellectual life and the twelfth-century renaissance. This book will provide, if not a correction, at least some observations that will create a more nuanced image of twelfth-century intellectual culture. The works of Vacarius, a man whose life coincided with more notable ones, provides a means of filling the interstices that remain in this period of great intellectual ferment.

### *Legal and Supra-legal Works*

Scholarly attention has principally focused on Vacarius’s legal output. As Chapter One in this book will demonstrate, the *Liber pauperum* was written by Vacarius as a legal textbook specifically for English students unfamiliar with Justinianic Roman law. Like the legal ‘casebook’ with which today’s law students are familiar, it extracts important texts from the Roman law *corpus* and adds commentary via explanatory glosses. Its importance in the re-birth of Roman law in the twelfth century has been unquestioned. But, as I will further discuss, the prologue to the *Liber pauperum* reveals that Vacarius’s aims in composing this work were to present the law as a broad analytical tool, extending beyond the confines of Justinianic Roman law.

In addition, the *Lectura ad Institutiones*, edited by Stein and De Zulueta, comprises a *reportatio* of a series of oral lectures probably delivered by a student of Vacarius, on the *Institutes* of Justinian.<sup>36</sup> The text for this work survives in one manuscript only: British Library, Royal MS. 4 B, and dates from the last quarter

<sup>35</sup> Haskins, *The Renaissance*, pp. 193–223 (esp. p. 195), and pp. 356–58.

<sup>36</sup> Pseudo-Vacarius, *Lectura ad Institutiones*, in *The Teaching of Roman Law*, ed. by De Zulueta and Stein, and see also the review by John L. Barton, ‘The Teaching of Roman Law in England around 1200’, *Journal of Legal History*, 14 (1993), 53–58 (pp. 56–57).

of the twelfth century.<sup>37</sup> The *Institutes* was the introductory textbook to a study of Roman law. The author of the *Lectura ad Institutiones* was most likely a pupil of Vacarius, who was also influenced by Johannes Bassianus, perhaps Peter Peverell or Simon of Sywell.<sup>38</sup>

Little attention has been focused on the ostensibly non-legal Vacarian works, those works which I have termed his 'supra-legal' works. Vacarius's *Summa de matrimonio* is one such supra-legal work; it examines the law of marriage, both in terms of its formation and dissolution.<sup>39</sup> Scholarship in the main has treated the work as a contribution to the twelfth-century debate between theologians and canonists on whether marriage was formed by consent or by consummation.

Indeed, the composition by two separate authors of the *Concordantia discordantia canonum*, which became known simply as the *Decretum*, some time after 1139, with another significantly revised version before 1158, established the centrality of canon law in Europe.<sup>40</sup> The *Decretum* purported to systematize, in the manner of the civilian glossators and the *Corpus iuris civilis*, the disparate, discordant, and multi-jurisdictional law of the Church. Canon law, additionally, witnessed the 'new' law constituted by papal decretals or letters on disputes, which were to take on a degree of normative force in ecclesiastical jurisdiction in the twelfth century. Vacarius's work on marriage, in this context, therefore provides a timely corrective to Haskins's virtual dismissal of the importance of canon law in the twelfth century renaissance.<sup>41</sup>

The subject of the person of Christ — christology — and, more particularly, the concept of the mode of the union of the human and divine in Christ in the incarnation (the hypostatic union), is a topic of some significance in several of Vacarius's works. His *Tractatus de assumpto homine* treats the theological debate

<sup>37</sup> See Stein's introduction to *The Teaching of Roman Law*, ed. by De Zulueta and Stein, p. xliv.

<sup>38</sup> Pseudo-Vacarius, *Lectura ad Institutiones*, in *The Teaching of Roman Law*, ed. by De Zulueta and Stein; see also Stein's introduction, pp. xliv–li.

<sup>39</sup> 'Magistri Vacarii Summa', ed. by Maitland, p. 137.

<sup>40</sup> Anders Winroth, *The Making of Gratian's Decretum* (Cambridge: Cambridge University Press, 2000).

<sup>41</sup> For a discussion of Haskins's dismissal of canon law, see Marcia L. Colish, *Remapping Scholasticism*, Etienne Gilson Series, 21 (Toronto: Pontifical Institute of Mediaeval Studies, 2000), p. 3. For examples of corrections to Haskins's approach, see Swanson, *The Twelfth-Century Renaissance*, p. 73; Harold Joseph Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983), pp. 4, 19, 23, 50.

on the hypostatic union of the divine and human natures in the one person (*hypostasis*) of Christ, a subject to which he later returned in the final *capitula* of the *Liber contra*.

Vacarius's engagement in this theological topic is significant, as it questions Haskins's characterization of the twelfth-century renaissance as comprising largely secular intellectual and cultural developments. Scholars now appreciate the unique contributions in theology and the speculative arts that arose in that period. Consistent with this trend, scholars have begun 'de-secularising' twelfth-century intellectual life and emphasizing its preoccupation with the 'internalising [of] the Christian message', pointing to innovations in religious life, mysticism, and devotion.<sup>42</sup> The depiction of theology as an academic discipline in its own right, linked to the educational changes from schools to universities, and as derived from biblical exegesis and speculative theology, has become a prominent feature of twelfth-century intellectual history.<sup>43</sup> Within theology, in addition, the role of logic has been seen as a unique feature of twelfth-century speculative

<sup>42</sup> Colish, 'Haskins' Renaissance', pp. 9, 11, 12; Colish, *Remapping Scholasticism*, pp. 8–9; Martin Grabmann, *Mittelalterliches Geistesleben: Abhandlungen zur Geschichte der Scholastik und Mystik*, 3 vols (Munich: Hueber, 1926–36); Marie-Dominique Chenu, *La théologie au douzième siècle* (Paris: Vrin, 1957), Part 2. [Note that the chapter, 'Grammaire et théologie', pp. 90–107, has been omitted from the English translation, which appears as: *Nature, Man and Society in the Twelfth Century: Essays on New Theological Perspectives in the Latin West*, trans. by Jerome Taylor and Lester K. Little (Chicago: University of Chicago Press, 1968; repr. Buffalo: University of Toronto Press, 1997)]; Richard W. Southern, *The Making of the Middle Ages* (London: Hutchinson, 1953; repr. 1962), esp. Chaps 3–5; Christopher N. L. Brooke, *The Twelfth-Century Renaissance* (London: Thames & Hudson, 1969), esp. Chap. 1; Giles Constable, *The Reformation of the Twelfth Century* (Cambridge: Cambridge University Press, 1996); Giles Constable, *Three Studies in Religious and Social Thought* (Cambridge: Cambridge University Press, 1995), as well as his 'Renewal and Reform in Religious Life', in *Renaissance and Renewal in the Twelfth Century*, ed. by R. L. Benson, Giles Constable, and Carol D. Lanham (Cambridge, MA: Harvard University Press, 1982; repr. Toronto: University of Toronto Press, 1991), pp. 37–67; Jean Leclercq, *The Love of Learning and the Desire for God: A Study of Monastic Culture*, trans. by Catherine Misrahi (New York: Fordham University Press, 1982).

<sup>43</sup> Gillian R. Evans, *Old Arts and New Theology: The Beginnings of Theology as an Academic Discipline* (Oxford: Clarendon Press, 1980); Joseph De Ghellinck, *Le mouvement théologique du XIIe siècle: sa préparation lointaine, avant et autour de Pierre Lombard, ses rapports avec les initiatives des Canonistes*, 2nd edn (Bruges: Éditions 'de Tempel', 1948); Chenu, *La théologie au douzième siècle*; Marcia L. Colish, *Peter Lombard*, 2 vols (Leiden: Brill, 1994), 1, pp. 33–34; David E. Luscombe, *The School of Peter Abelard: The Influence of Abelard's Thought in the Early Scholastic Period* (Cambridge: Cambridge University Press, 1969).

thought. Further, Holopainen has examined the systematic development in theology through dialectic, employing logic, reason, and doctrine to achieve this in the late eleventh century.<sup>44</sup>

With this renewed emphasis on religiosity and a more speculative type of thinking, both lay and religious authorities were confronted by threats to orthodoxy in the form of heresy.<sup>45</sup> This heresy could take the form of errors in doctrinal understanding, brought about by way of scholastic disputes. Vacarius's *Tractatus de assumpto homine* has been relatively ignored by scholars in this broader context. Studies on that work have failed to contextualize it and its author adequately in the scheme of the theological debates on the hypostatic union and the so-called error of Christological Nihilianism in the mid- to later twelfth century.

But heresy also took on a more obvious and popular form. The better known and most widespread of these were the movements of the Cathars or Albigensians, as well as such groups as the Poor Lombards or Poor Men of Lyons; such groups flourished in southern France and Italy. Within this volatile context, Vacarius wrote a discursive letter to a friend, Hugo Speroni, entitled *Liber contra multiplices et varios errores*.<sup>46</sup> It seems that Speroni had previously sent to Vacarius a work, no longer extant, setting out his unorthodox views on the sacraments of holy orders, baptism, the Eucharist, and confession. His theological accounts of justification, predestination, and original sin were also aberrant. By responding to and refuting these ideas in his *Liber contra*, Vacarius encompasses both the polemical style necessary to deal with many popular heresies, as well as the more detached, reflective, and analytical style typical of the school masters.

Two dominant strands have characterized scholarship on these works of Vacarius. The first is whether they and Vacarius are truly 'scholastic', in the various ways that Richard Southern and others have understood that term.

<sup>44</sup> Toivo J. Holopainen, *Dialectic and Theology in the Eleventh Century* (Leiden: Brill, 1996), pp. 1–5.

<sup>45</sup> Robert I. Moore, *The Formation of a Persecuting Society: Power and Deviance in Western Europe, 950–1250* (Oxford: Blackwell, 1987); Robert I. Moore, *The First European Revolution: c. 950–1217* (Oxford: Blackwell, 2000); Heinrich Fichtenau, *Ketzer und Professoren: Häresie und Vernunftglaube im Hochmittelalter* (Munich: Beck, 1993), repr. as *Heretics and Scholars in the High Middle Ages*, trans. by Denise A. Kaiser (Philadelphia: Pennsylvania University Press, 1998).

<sup>46</sup> *Liber contra*, pp. 471–583.



Second, criticism has been levelled at Vacarius, and more generally at his posthumous reputation as a *litteratus* of the twelfth century worthy of mention alongside such figures as Becket, John of Salisbury, Gilbert Foliot, and others, for using Roman law in an inappropriate context. Vacarius, it has been said, had no interest in, for example, ‘canonistic science’, but instead used ‘a number of rather ill-fitting civilian similes’.<sup>47</sup> This last point problematizes whether Vacarius can be considered a lawyer-theologian, in the same way that figures such as Gilbert Foliot can.

In foreshadowing here the contemporary theological and legal contexts in which his works ought to be considered, it remains next to consider a key conceptual issue underlying understandings of Vacarius’s works and the twelfth-century renaissance itself: namely the various meanings and implications for the twelfth century of the notion of scholasticism.

### *Scholasticism*

The term scholasticism is one which can mislead as easily as it can inform. As well as encompassing a medieval concept, it also connotes historians’ and other scholars’ approaches to the study of intellectual culture.<sup>48</sup>

The classic text which has established the basis for modern research into medieval scholasticism is Martin Grabmann’s 1909 work on the history of the scholastic method. Grabmann presented scholasticism as a set of intellectual methods, rather than the doctrinal teaching of a master or a school.<sup>49</sup> These methods, moreover, through the application of reason and philosophy to revealed truth, sought to arrive at a more profound knowledge of the content of faith. Arguably, then, his definition of method is in fact a search for doctrine in

<sup>47</sup> See, for example, Stephan Kuttner and Eleanor Rathbone, ‘Anglo-Norman Canonists of the Twelfth Century’, *Traditio*, 7 (1949–51), 279–358 (pp. 287–88, n. 22); repr. as ‘Retractiones VIII’, in *Gratian and the Schools of Law 1140–1234*, ed. by Stephan Kuttner (London: Variorum, 1983), pp. 23–38. I will discuss this in relation to the *Liber contra* in Chapter 4, below.

<sup>48</sup> I am indebted, in the following discussion, to the ideas put forward in two incisive articles on the topic: Willemien Otten, ‘Medieval Scholasticism: Past, Present and Future’, available from <[http://geocities.com/ichurch\\_history/EJICS/otten\\_medscholasticism.htm](http://geocities.com/ichurch_history/EJICS/otten_medscholasticism.htm)> [accessed 9 September 2002], pp. 1–5, and Colish, *Remapping Scholasticism*.

<sup>49</sup> Martin Grabmann, *Die Geschichte der scholastischen Methode: nach den gedruckten und ungedruckten Quellen* (Berlin: Akademie Verl., 1988), pp. 36–37.

the supernatural. Another great German scholar, in a parallel development, nurtured the concept of *Frühscholastik* ('early scholastic') to the method-doctrine tension evident in Grabmann's definition, to describe scholasticism more explicitly in apologetic terms, as a gradual development of intellectual modernity which reached its apogee in the form of Thomas Aquinas in the thirteenth century.<sup>50</sup> Others, such as McGrath, have likewise defined scholasticism as a school practice or method, rather than the embodiment of a well-defined doctrine; in the words of De Rijk: '[Scholasticism] was an approach, which is characterized by the use, in both study and teaching, of a constantly recurring system of concepts, distinctions, definitions, proposition analyses, argumentative techniques and disputational methods'.<sup>51</sup>

A further debate divided attempts to arrive at a consensus on the meaning of the term, however. A rift appeared between those who presented scholastic thought as pure philosophy, and those who argued instead that it was philosophical and theological.<sup>52</sup> The chief exponent of the first or 'separatist' view was Fernand van Steenberghen, while the chief defender of the second or 'Christian philosophy' view was Etienne Gilson. Nevertheless, both supported the view that Thomas Aquinas represented the pinnacle of medieval thought, after whom there was a decline.<sup>53</sup>

The late Sir Richard Southern has few peers in modern scholarship in his treatment of scholasticism. He identified scholasticism with the terms 'medieval

<sup>50</sup> Artur Michael Landgraf, *Dogmengeschichte der Frühscholastik*, 4 vols in 8 (Regensburg: Pustet, 1952–56); Artur Michael Landgraf, *Introduction à l'histoire de la littérature théologique de la scolastique naissante*, ed. by Albert-M. Landry and trans. by Louis-B. Geiger (Montréal: Institut d'études médiévales, 1973).

<sup>51</sup> Alister E. McGrath, *Reformation Thought. An Introduction*, 2nd edn (Oxford: Clarendon Press, 1993), p. 68; Lambert Marie De Rijk, *Middeleeuwse wijsbegeerte. Traditie en vernieuwing*, 2nd edn (Assen: Gorcum, 1981), pp. 25, 111; repr. in French as: *La philosophie au moyen âge* (Leiden: Brill, 1985), pp. 20–21, 85.

<sup>52</sup> Fernand Van Steenberghen, *Aristotle in the West: The Origins of Latin Aristotelianism*, trans. by Leonard Johnston, 2nd edn (New York: Nauwelaerts, 1970); Fernand Van Steenberghen, *La philosophie au XIIe siècle*, 2nd edn (Louvain-la-Neuve: Éditions de l'Institut supérieur e philosophie, 1991); Etienne Gilson, *History of Christian Philosophy in the Middle Ages* (London: Sheed & Ward, 1955); Etienne Gilson, *Reason and Revelation in the Middle Ages* (New York: Scribner, 1938; repr. 1966).

<sup>53</sup> Along with these two scholars, Marenbon perceived two further approaches to scholasticism, namely the modern logical/linguistic approach and the 'historical approach': John Marenbon, *Later Medieval Philosophy (1150–1350): An Introduction* (London: Routledge & Kegan Paul, 1987).

humanism', and subsequently, 'scholastic humanism'. Southern argued that Anselm of Bec/Canterbury, traditionally regarded as the 'father of scholasticism', was also a humanist.<sup>54</sup> Rather than seeing humanism as a 'Renaissance' concept — like the anti-Burckardian Haskins — Southern instead defined medieval humanism as: 'that outlook which ensues when the elements of dignity, order, reason and intelligibility are prominent in human experience'.<sup>55</sup> Against Renaissance critics of the Middle Ages, and utilizing a definition of humanism which differed explicitly from traditional scholarly interpretation by including rather than excluding scholasticism, Southern argued that the period between 1110 and 1320 was one of the great ages of humanism in Europe, if not the greatest of all.

Where he had earlier formulated the concept of 'medieval humanism', Southern sought to flesh out this term in his later works on 'scholastic humanism'. Southern, like Grabmann, although more clearly so, implied the priority of method over doctrine in scholasticism. Thus, scholastic humanism had four characteristics. First, Southern confirmed that scholastic method arose from the schools. The programme of the schools encompassed the remaining three principles. The second was that the human intellect was created capable of understanding both the purpose of God in the Creation and the structure of the whole created order, and, third, that — even after the fall — the main outlines of the structure and development of the universe had become accessible to human minds by the special revelation of God and the efforts of inspired and able scholars. Fourthly, by a further extension of this general intelligibility, it was also believed that the means by which God had redeemed mankind by the Incarnation and sacrifice of Christ on the Cross were also capable of being understood.<sup>56</sup> Southern's definition of scholasticism was similar to Grabmann's in that the former saw mankind as created to link the natural and supernatural orders, but Southern avoided the 'essentialist' nature of Grabmann's definition by favouring a more 'formalist' approach, that is, by comprehensively contextualizing scholastic thought in its various forms.

But Willemien Otten noted the limitations in Southern's idea of scholasticism. First, she felt that Southern went too far in his formalist

<sup>54</sup> Richard W. Southern, *St Anselm. A Portrait in a Landscape* (Cambridge: Cambridge University Press, 1990), p. 441.

<sup>55</sup> Richard W. Southern, *Medieval Humanism and Other Studies* (Oxford: Blackwell, 1970), p. 31.

<sup>56</sup> Southern, *Medieval Humanism*, p. 40.

descriptions such that it became hard to connect the examples of scholasticism with any specifics at all.<sup>57</sup> Second, she argued that Grabmann and Southern shared an identical vision of the goal of scholasticism, that is the finding of a delicate balance between reason (*ratio*) and authority (*auctoritas*), or the natural and the supernatural. The problem for Otten, however, was that the idea shared by these two great scholars was a 'construct'. Contrary to Southern's view that scholasticism in the twelfth century was a natural evolution from the intellectual methods of Anselm and Augustine, Otten argued that it was, in fact, distinct. This was so, she argued, particularly in the use by scholastics of authorities in a way quite different from their forebears.<sup>58</sup>

Marcia Colish has recently attempted to 'map' scholasticism, in reference to medieval intellectual history.<sup>59</sup> Colish's study reveals that it is indeed difficult to define scholasticism too tightly when that notion — as understood by medievalists — has come to represent figures from the eleventh to the fourteenth centuries and in studies as diverse as mathematics, logic, theology, and law.

Before considering Vacarius in the context of scholasticism, I have shown the problematic nature of that term. On the one hand, its scope is elastic and capable of variant definitions, definitions which would bring Vacarius within its purview. But does this lack of a clear definition imply that the term 'scholasticism' has little use for historians? I think not. The word embodies, at its essence, the connection between humankind and learning. Further, scholasticism can be seen simply as the practice of the medieval schools, or the didactic method they employed. It is in within such contexts that this study will consider Vacarius's role in the twelfth-century renaissance.

The question of whether Vacarius himself was a 'scholastic' has been the subject of discussion by Southern.<sup>60</sup> Southern envisaged Vacarius as a scholastic of sorts, along with three other masters — John of Salisbury, the younger Peter of Blois, and the elder Peter of Blois. They were men who:

<sup>57</sup> Otten, 'Medieval Scholasticism', p. 3.

<sup>58</sup> Otten has maintained this critique to scholasticism in her recent monograph, preferring to describe twelfth-century intellectual culture in terms of 'theologizing': Willemien Otten, *From Paradise to Paradigm: A Study of Twelfth-Century Humanism*, Brill's Studies in Intellectual History, 127 (Leiden: Brill, 2004), p. 1.

<sup>59</sup> Colish, *Remapping Scholasticism*.

<sup>60</sup> Southern, 'Master Vacarius', pp. 263–64; Richard W. Southern, *Scholastic Humanism and the Unification of Europe. Volume 2: The Heroic Age* (Oxford: Blackwell, 2001), p. 163, hereafter cited as Southern, *Scholastic Humanism: The Heroic Age*.

carried their scholastic learning into the service of government [...] In relatively modest positions they helped to formulate the policies, wrote the letters, expressed the intentions, and understood the theoretical foundations on which governmental policies, particularly with regard to the relationship between secular and ecclesiastical rulers, were founded [...] They adapted the knowledge of the schools to the] various needs and desires of the world, either in giving a popular form to scholastic knowledge, or in turning scholastic knowledge to practical use [...] These scholastics] were in all varying degrees successful in turning the new learning of the schools to practical use and in giving scholastic knowledge a wider readership without themselves making any notable addition to scholastic knowledge.<sup>61</sup>

In this way, Southern adopts Beryl Smalley's view of such schoolmen as 'unabashed careerists'.<sup>62</sup>

On this basis, Southern dismissed Vacarius's works as 'unscholastic'.<sup>63</sup> The *Summa de matrimonio*, he noted, was written with a 'spirit of detachment from a scholastic environment';<sup>64</sup> Vacarius did not seek in any way to present a 'systematic reply' to the alternative views on marriage to his own or to 'meet objections in a formal scholastic way'.<sup>65</sup> Similarly, Southern commented that the *Tractatus de assumpto homine* was neither scholastic nor 'connected with any scholastic tradition'.<sup>66</sup> Vacarius's interest in the debate on the hypostatic union, instead, Southern suggested, came from 'a conversation with a friend' from whom Vacarius had derived all his knowledge of the debate and the dissenting arguments. The topic of the hypostatic union had been the subject of extensive previous discussion by schoolmen, and implicitly thereby a topic that itself had been exhausted, Southern implied; the authorities used by Vacarius, such as Boethius, Augustine, and Claudianus Mamertus, were works which he 'happened to own or have at his disposal', and which he quoted 'in a long-winded discursive fashion uncharacteristic of scholastic practice'.<sup>67</sup>

<sup>61</sup> Southern, *Scholastic Humanism: The Heroic Age*, pp. 4–5.

<sup>62</sup> Beryl Smalley, *The Becket Conflict and the Schools: A Study of Intellectuals in Politics* (Oxford: Blackwell, 1973), p. 12.

<sup>63</sup> Southern, 'Master Vacarius', pp. 263–64; Southern, *Scholastic Humanism: The Heroic Age* p. 163.

<sup>64</sup> Southern, *Scholastic Humanism: The Heroic Age*, p. 163.

<sup>65</sup> Ibid., p. 163.

<sup>66</sup> Ibid., p. 163.

<sup>67</sup> Ibid., p. 163. Häring shared this view; see his commentary in 'The "Tractatus"', ed. by Häring, p. 149.

Southern believed that the work on Speroni showed Vacarius 'as a thoughtful, well-read, orthodox man, who disapproved of modern novelties as far as he knew them, and retained, without having much scope for its practical use, a predilection for Roman law'.<sup>68</sup> With his evaluation of the *Tractatus de assumpto homine* as 'uncharacteristic of scholastic practice' and the *Summa de matrimonio* as detached 'from a scholastic environment', Southern consistently noted that a similar independence characterized the *Liber contra*.<sup>69</sup> This view of the *Liber contra* was shared by Da Milano. The *Liber contra*, he said, lacked systematic ordering and interconnecting of the various heads of doctrine, which altered, stopped, or were repeated according to the polemical point being made.<sup>70</sup> Da Milano referred to several characteristics of the *Liber contra* which demonstrated that Vacarius's work was not an 'organic' scholastic treatment,<sup>71</sup> despite its 'dialogue' form and analytical method.<sup>72</sup>

In addition, the affectionate sentiment and cordial tone of the introduction, indicative of the friendship between Speroni and Vacarius, which had blossomed when they studied together thirty years before, gave the piece a particularly personal tone.<sup>73</sup> It was un-scholastic in the sense that it was 'polemical', a description he understood as exclusive and in opposition to scholastic. Da Milano also noted Vacarius's failure to use contemporary authorities or patristic authorities. Finally, Da Milano noted the work's strongly apologist tone, its direct address to Speroni, and its narrow polemical ambit, all of which made his work 'controversialist' rather than 'scholastic'.<sup>74</sup> Da Milano concluded that the *Liber contra* was isolated and independent from any school or particular tendency.<sup>75</sup> This confirmed the notion earlier mentioned, that Vacarius has been seen by scholars as standing alone in his methodological tendency to use Roman law in non-legal contexts.

<sup>68</sup> Southern, *Scholastic Humanism: The Heroic Age*, p. 165.

<sup>69</sup> *Ibid.*, p. 163.

<sup>70</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, pp. 37–48. See also *Heresies of the High Middle Ages: Selected Sources*, ed. and trans. by Walter L. Wakefield and Austin P. Evans (New York: Columbia University Press, 1991), pp. 29–30, and pp. 152–58.

<sup>71</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 64.

<sup>72</sup> *Ibid.*, p. 104.

<sup>73</sup> *Ibid.*, pp. 98–100.

<sup>74</sup> *Ibid.*, p. 106.

<sup>75</sup> *Ibid.*, pp. 108–09.

Despite describing these works as un-scholastic, Southern exemplified Vacarius as one of the ‘humanistic scholastics’ from the schools who turned their theoretical work into practical use in government, especially in the investigation, stabilization, and enforcement upon all individual members of society of the definition of faith.<sup>76</sup> In the context of Southern’s study of scholastic humanism in the twelfth century, Vacarius was ‘one of the many men in late twelfth-century England who, after showing promising abilities in one or more of the great schools, became more or less totally immersed in the practical work of government and in local affairs’.<sup>77</sup> This observation is borne out by Vacarius’s biography, outlined above, and follows a long line of scholarship linking Vacarius to the ecclesiastical courts of mid- to late twelfth-century England, notably to figures such as John of Salisbury, Thomas Becket, and Roger, Archbishop of York.<sup>78</sup> Accordingly, Southern (and Da Milano) presented a self-contradictory assessment of Vacarius as both ‘unscholastic’ and yet an exponent of practically-minded ‘scholastic humanism’. This book will assess whether either of these assessments really applies to Vacarius.

### *Lawyer-theologian*

Recent studies have turned away from emphasizing Vacarius’s scholasticism and have instead focused on the interaction between his Roman law background and

<sup>76</sup> Southern, *Scholastic Humanism: The Heroic Age*, p. 152.

<sup>77</sup> Ibid., p. 165.

<sup>78</sup> Reginald L. Poole, ‘The Masters of the Schools of Paris and Chartres in John of Salisbury’s Time’, in *Studies in Chronology and History*, ed. and annot. by Austin Lane Poole (Oxford: Clarendon Press, 1934), pp. 223–97; Walter Ullmann, ‘John of Salisbury’s *Policraticus* in the Later Middle Ages’, in *Jurisprudence in the Middle Ages*, ed. by Walter Ullmann (London: Variorum, 1980), pp. 519–45 (esp. pp. 519, and p. 530); Nederman’s introduction to *John of Salisbury. Policraticus: Of the Frivolities of Courtiers and the Footprints of Philosophers*, ed. by Cary J. Nederman (Cambridge: Cambridge University Press, 1990), pp. xv–xxvi; Poole, *Studies in Chronology and History*, pp. 298–301; Mary G. Cheney, *Roger, Bishop of Worcester 1164–1179* (Oxford: Clarendon Press, 1980); Frank Barlow, *Thomas Becket and his Clerks* (Canterbury: Friends of the Canterbury Cathedral, 1987), p. 178; Frank Barlow, *The English Church 1066–1154* (London: Longman, 1979), p. 255; C. Warren Hollister, ‘Anglo-Norman Political Culture and the Twelfth-Century Renaissance’, in *Anglo-Norman Political Culture and the Twelfth-Century Renaissance*, ed. by C. Warren Hollister (Woodbridge: Boydell, 1997), pp. 1–16; Chenu, *Nature, Man and Society*; and Richard C. Dales, ‘A Twelfth-Century Concept of the Natural Order’, *Viator*, 9 (1978), 179–92.

his supra-legal literary output. Guareschi, noting the limitations in Da Milano's study, and implicitly the limitations of Southern's analysis, argued that Vacarius and Speroni were the exemplars of a new category of intellectual output, that of the 'Justinianic Roman law-theologian'.<sup>79</sup>

According to Guareschi, Vacarius and Speroni were representative of a group which combined the disciplines of theology and Justinianic Roman law, the so-called 'Justinianic Roman law theologian'.<sup>80</sup> This group was quite distinct from the previous paradigms of, on the one hand, canonist-theologians (as described by De Ghellinck and Grabmann) and, on the other, canonist-Roman lawyers (according to Gouron and others).<sup>81</sup> Moreover, scholarship has failed to compare the unique literary output of Vacarius with that of contemporaries who may have adopted a similar tradition.<sup>82</sup>

<sup>79</sup> Guareschi noted two limits to Da Milano's study. The first was that Da Milano contrasted the theological, ecclesiological, and sacramental position of Speroni and Vacarius with dogmatic Roman Catholic belief formulated in the thirteenth century; a kind of 'theological determinism'. Second, Da Milano failed to provide the historical context in which Speroni's arguments were made, thus reducing Speroni's thought to a series of propositions divorced of context. This non-'morphological' approach was exacerbated in a later work by Da Milano, in which he compared the Speronists to other 'predestination' heretics such as Wyclif and Hus, although they post-dated Speroni by some centuries. See Ilarino Da Milano, 'Le eresie medioevali', in *Grande antologia filosofica*, ed. by U. A. Padovani and A. M. Moschetti, 3 vols (Milan: Marzorati, 1953), I, pp. 1568–69; Massimiliano Guareschi, 'Ugo Speroni e la tradizione storiografica', in *Storia ereticale e anti-ereticale del medioevo*, ed. by Grado G. Merlo (Torre Pellice: Società di studi valdesi, 1997), pp. 24–48 (pp. 24–28); Guareschi, 'Gli incontri', pp. 385, 390–91, 412–14. For further criticism of Da Milano's study, see Herbert Grundmann, 'Nuovi contributi alla storia dei movimenti religiosi', in *Movimenti religiosi nel Medioevo*, ed. by Herbert Grundmann (Bologna: Il Mulino, 1984), pp. 446–65 (p. 449), which appears in English in *Religious Movements in the Middle Ages: The Historical Link between Heresy, the Mendicant Orders, and the Women's Religious Movement in the Twelfth and Thirteenth Century, with the Historical Foundations of German Mysticism*, trans. by Steven Rowan and intro. by Robert E. Lerner (Notre Dame, IN: University of Notre Dame Press, 1995), pp. 217, 228.

<sup>80</sup> Guareschi, 'Gli incontri', pp. 385, 390.

<sup>81</sup> See the discussion on the interaction between theology and canon law in Peter Landau, 'Sakramentalität und Jurisdiktion', in *Das Recht der Kirche: Zur Geschichte des Kirchenrechts*, ed. by Gerhard Rau, Hans-Richard Reuter, and Klaus Schaich (Gütersloh: Kaiser, 1995), pp. 58–95; De Ghellinck, *Le mouvement théologique*, pp. 523–32.

<sup>82</sup> As I commenced this study, Guareschi had already provided me with the chapter 'Master Vacarius', from his forthcoming publication *Dimensione*, which purports to undertake such a comparison. At the time of writing, however, this work has not yet been published, nor have I been able to obtain from the author his remaining chapters.



Further, Vacarius's 'third way' in the marriage debate can rather be seen as exemplifying an original approach to a difficult problem, despite others maintaining that his use of civil law analogies to theological problems was 'ill-fitting' and unscholastic.<sup>83</sup> In a further trend against dismissing these later works as unscholastic, Stein has described Vacarius as using the civil law as a 'basic grammar' which was universally applicable. The structure of general notions advocated by Vacarius, as present in the Roman law, argues Stein, could be used to impose a rational classification on any body of both legal material, including canon and customary law, as well as theological material.<sup>84</sup> As I have already mentioned, Stein called this an application of a type of 'universal jurisprudence'.<sup>85</sup>

### *Chapter Outline*

This study will consider Vacarius in his appropriate historical context. Although the consideration of Vacarius within the parameters of 'Justinianic Roman law-theologians' would be most appropriate, such a background is not yet established in the literature dealing with Vacarius and his works. It is necessary to begin building such a background. In addition, this work will consider Vacarius in the context of 'scholasticism' — understood both as practically-minded humanism and academically-orientated intellectual speculation — and within Stein's concept of a universally-applicable 'basic grammar'. Such a task was previously inconceivable to scholars of Vacarius, who concentrated mainly on his Roman law writings. Given that his writings covered the additional areas of canon law, customary law, theology, and sacramentology, however, a more diverse approach is long overdue. This study seeks to discover exactly how Vacarius informed his writings with a 'universal jurisprudence' that extended beyond Roman law to canon law and theology.

In this introduction, I have provided a brief biographical account of Vacarius's career and his works. In addition, I have established the underlying

<sup>83</sup> Kuttner and Rathbone, 'Anglo-Norman Canonists', p. 287.

<sup>84</sup> Peter Stein, 'The Vacarian School', *Journal of Legal History*, 13 (1992), 23–31 (pp. 26–30).

<sup>85</sup> Peter Stein, 'Vacarius and the Civil Law', in *Church and Government in the Middle Ages: Essays Presented to C. R. Cheney*, ed. by D. E. Luscombe and others (Cambridge: Cambridge University Press, 1976), pp. 119–37 (p. 136); repr. in *The Character and Influence of the Roman Civil Law: Historical Essays*, ed. by Peter Stein (London: Hambledon Press, 1988), pp. 167–85.

and problematic contexts of scholasticism and the lawyer-theologian. Four chapters follow.

Chapter One examines Vacarius's legal teaching, particularly through his most famous work, the *Liber pauperum*. I argue that this work represented a mixed school of canon- and Roman law teaching, and, therefore, held a place within the context of the twelfth-century *ius commune*. I also discuss the implications of Vacarius's broad notion of jurisprudence, which transcended law to inform his understanding of the disciplines of the arts more generally.

Chapter Two focuses on Vacarius's views on marriage, as set out in his *Summa de matrimonio*. My analysis compares the *Summa de matrimonio* to contemporary canon law, Roman law, and theological works on the law of marriage formation and dissolution. I argue that Vacarius's contribution to marriage law, whilst ostensibly representing an alternative to the prevailing views via the concept of *traditio*, also marks innovative techniques in disputation and conflict resolution.

Chapter Three explores Vacarius's christological thought in two separate texts composed by him: the *Tractatus de assumpto homine*, and the final section of the *Liber contra*. Each of these texts are addressed individually. The first section is given over to discussing the problematic issue of the proper historical context within which these works ought to be considered. I then discuss the *Tractatus de assumpto homine* in these contexts. The third section examines Vacarius's treatment of christology in the *Liber contra*. After comparing this latter text to the *Tractatus de assumpto homine* and contemporaneous christological thought, I conclude Chapter Three by reflecting on Vacarius's contribution to the christological debates. I argue that Vacarius's thought, whilst not strictly 'scholastic' in the Parisian school sense, gestures towards this discourse, while at the same time retaining threads of originality based on practicality.

Chapter Four deals with Vacarius's views on sacramental and related theological matters, as set out in his *Liber contra*. This work contains Vacarius's views on the sacraments of holy orders, the Eucharist, baptism, confession; it also probes other theological issues on justification, predestination, and works. Exploring Vacarius's views on these matters of Christian doctrine, I compare them to contemporaneous views.

I conclude this book with an attempt to evaluate and explain the supra-legal works of Vacarius. I argue that, in light of the new historical contexts for these works, as established in this study, they are deserving of re-evaluation. In addition, I suggest that the unique methodology informing Vacarius's works is a universal form of discourse. This discourse, with its focus on resolving disputes

in the sacramental sphere and the pastoral context, transcends the divide between law and theology.



## TEACHING LAW

Vacarius's life and works intersect with two crucial developments in twelfth-century intellectual life: theology and law. Parallel with his engagement in these two emergent and emerging disciplines, Vacarius's links with the schools at Oxford and elsewhere at this time necessitate considering him as a 'scholastic'. And there can be no doubt of Vacarius's scholastic trajectory by dint of his commitment to teaching in the schools. This is particularly so with regard to his teaching of law. This chapter will focus on Vacarius and his law-teaching in the context of England and Europe in the mid- to later-twelfth century, with reference to the *Liber pauperum* in particular, as well as the *Lectura ad Institutiones*.

### *Law and Society in the Twelfth Century*

The renewed study of Roman law was included in Haskins's account of the twelfth-century renaissance as a further example of what he saw as a secular revival of Greco-Roman intellectual culture.<sup>1</sup> This legal aspect of the twelfth-century renaissance, in particular the teaching of Roman law during the first half of the twelfth century, has been little understood by scholars, and, until recently, a subject not easily approached.<sup>2</sup> The traditional account for the resurgence of

<sup>1</sup> Charles Homer Haskins, *The Renaissance of the Twelfth Century* (Cambridge, MA: Harvard University Press, 1927; repr. New York: Meridian Books, 1957), p. 194.

<sup>2</sup> The best available survey is still Friedrich Karl Von Savigny, *Geschichte des römischen Rechts im Mittelalter*, 2nd edn, 6 vols (Heidelberg, J. C. B. Mohr, 1834–51), esp. IV. This should be supplemented with the more recent work, *Studies in the Glossators of the Roman Law: Newly*

Roman law in the early twelfth century was that, following the rediscovery of the Florentine manuscript of Justinian's *Digest* in c. 1070 by Bolognese teachers, the scientific study of Roman law began with Pepo (fl. last quarter of the eleventh century) and Irnerius (d. 1130).<sup>3</sup> Irnerius was credited with lecturing on the *Corpus iuris civilis* to several students who were to become known as the 'Four Doctors' — Martinus Gosia, Bulgarus, Jacobus, and Ugo de Porta Ravennate.<sup>4</sup> Further, in the next phase of this traditional account, Bulgarus had commenced teaching Roman law at Bologna by 1115,<sup>5</sup> and, as we have already seen, it has been subsequently assumed that Vacarius was taught at Bologna, possibly by one of the Four Doctors, in the period from the 1130s to 1140s.

The findings of Anders Winroth, however, have questioned this traditional picture.<sup>6</sup> It is Winroth's argument that the study of Roman law as an academic science only began at Bologna in the 1130s. In addition, this was preceded in the early decades of the twelfth century by a less-sophisticated jurisprudence and a more practically-minded approach to the study of law glosses — apparent in the glosses of Irnerius. Such Irnerian glosses were more akin to the concerns of a lawyer or judge than an academic.<sup>7</sup> In the 1150s, after Vacarius's time in the Bolognese schools had ended, however, Justinianic Roman law became more sophisticated as a science. Winroth made these observations when establishing his central thesis that Gratian's *Decretum* was composed, not as traditionally believed, in around 1140, but in two recensions, and by different authors ('Gratian I' and 'Gratian II'): the first no earlier than 1139, and the second after

*Discovered Writings of the Twelfth Century*, ed. by Hermann Kantorowicz and W. W. Buckland (Cambridge: Cambridge University Press, 1938). See also *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, ed. by Helmut Coing (Munich: Beck, 1973), and Hermann Lange, *Römisches Recht im Mittelalter*, 1: *Die Glossatoren* (Munich: Beck, 1997).

<sup>3</sup> Wolfgang P. Müller, 'The Recovery of Justinian's Digest in the Middle Ages', *Bulletin of Medieval Canon Law*, 2 (1990), 1–29.

<sup>4</sup> Accounts can be found in Charles Donahue, 'Law, civil', in *Dictionary of the Middle Ages*, ed. by Joseph R. Strayer (New York: Scribner, 1982–89), pp. 418–25; Manlio Bellomo, *The Common Legal Past of Europe 1000–1800*, Studies in Medieval and Early Modern Canon Law, 4 (Washington: Catholic University of America Press, 1995), pp. 60–63; Ennio Cortese, *Il diritto nella storia medievale*, 2 vols (Rome: il Cigno Galileo Galilei, 1995), II, pp. 5–102; Ennio Cortese, *Il rinascimento giuridico medievale*, 2nd edn (Rome: Bulzoni, 1992).

<sup>5</sup> *Studies in the Glossators*, ed. by Kantorowicz and Buckland, p. 69.

<sup>6</sup> Anders Winroth, *The Making of Gratian's Decretum* (Cambridge: Cambridge University Press, 2000).

<sup>7</sup> Winroth, *The Making*, pp. 157–70.

this date but before 1158.<sup>8</sup> The principal reason for this finding was that the second recension exhibited a greater sophistication in Roman legal science than the earlier recension. The important observation to emerge from this thesis is the artificiality of the distinction between Justinianic Roman law and canon law in the 1130s, and even in the Bolognese schools of the 1150s and 1160s. Winroth pointed to the ‘entanglement’ and fusion of these ‘two laws’ after the first quarter of the twelfth century, a phenomenon which scholars have called the ‘European Common Law’, or *ius commune*.<sup>9</sup> I will discuss Vacarius’s relationship to the *ius commune* later in this chapter.

Consistent with this blurring of the distinction between secular and sacred law, Western Christendom in the twelfth-century was becoming increasingly legal in character. Rulers recognized that law had an increased role to play in society. Emperors such as Frederick I, ‘Barbarossa’ (crowned king of Germany in 1152; crowned Holy Roman Emperor in 1155; d. 1190) recognized the importance of Justinianic Roman law and its teaching, for shaping a theory of Empire.<sup>10</sup> He decreed the *authentica* ‘*Habitum*’ in 1155, which granted privileges and immunities to scholars and students at Bologna.<sup>11</sup> In the 1160s and 1170s, in England, King Henry II (who ruled from 1154–89) similarly commenced a drive for ‘law and order’, following the so-called ‘anarchy’ of his predecessor, Stephen, by establishing a system of law courts across the country from 1176 onwards.<sup>12</sup>

This change in the jurisprudential and practical conception of law applied to ecclesiastical as well as secular authorities. Robert Moore has argued that the role of law became proactive rather than passive, as it had been previously,

<sup>8</sup> Winroth, *The Making*, p. 139.

<sup>9</sup> *Ibid.*, p. 196.

<sup>10</sup> Kenneth Pennington, *The Prince and the Law, 1200–1600. Sovereignty and Rights in the Western Legal Tradition* (Berkeley: University of California Press, 1993), p. 12.

<sup>11</sup> An *authentica* is an imperial constitution that was issued after Justinian’s promulgation of his *Code* in 529, but inserted into it by twelfth-century law teachers. Winroth questions whether this was merely a privilege for the University of Bologna, through which the Emperor took students and teachers of law there under his protection. The language of the *authentica*, he notes, makes reference to all students in Italy: Anders Winroth, ‘Origins of Legal Education in Medieval Europe’, paper presented to the University of Southern California, Center for Law, History, and Culture, 8 March 2006, available from <[http://law.usc.edu/academics/centres/clhc/archives/workshops/spring\\_06.html](http://law.usc.edu/academics/centres/clhc/archives/workshops/spring_06.html)> [accessed 11 July 2006], pp. 1–27.

<sup>12</sup> Paul Brand, ‘“Multis Vigilis Excogitatem Et Inventam”: Henry II and the Creation of the English Common Law’, in *The Making of the Common Law*, ed. by Paul Brand (London: Hambledon Press, 1992), pp. 77–102.

particularly in the context of heresy.<sup>13</sup> His thesis was that Western Europe underwent its 'first' revolution in the twelfth century, which brought Europe into being as an entity; this period was also when an 'administrative class', comprised of 'clerks of Latin Christendom', identified their interests with those of their patrons and gained a separate status — a 'high or clerical culture' — which distinguished them in a separate, international, 'spiritually dominant social order'.<sup>14</sup> These new men of the twelfth century were identified by their literary and literacy skills and their familiarity with law. The teachers and students of Bologna, Moore argued, provided these clerics of Europe with a capacity to create a 'single body of law, promulgated and enforced through a uniform set of courts and procedures, for the first time since antiquity'.<sup>15</sup> This use of law for hegemonic purposes, Moore added, particularly in dealing with alterity, coincided and developed with the rise of scholasticism and the universities.

Moore's argument followed from Harold Berman's description of this increasingly legalized ecclesiastical bureaucracy in the late eleventh- and twelfth century as part of the 'papal revolution'.<sup>16</sup> He argued that, between 1075 and 1122, the period of Gregorian Reform, also known as the 'Western legal tradition', was born. Following the ascension to the pontificate of Hildebrand, or Pope Gregory VII (1073–85), the twelfth century became a 'legal century', through the combined media of the rebirth of the study of Justinianic Roman law, the rise of the scholastic method, and the emergence of the universities. Through these inter-linked influences, the law of the church became systematized. Both Berman and Moore recognized the role of the schools of Bologna in promoting this new scientific study of law, a point also emphasized by Walter Ullmann in his description of papal government.<sup>17</sup> During the

<sup>13</sup> Robert I. Moore, *The First European Revolution, c. 970–1215* (Oxford: Blackwell, 2000), pp. 160–98; Robert I. Moore, *The Formation of a Persecuting Society: Power and Deviance in Western Europe, 950–1250* (Oxford: Blackwell, 1987); see also Robert I. Moore, *The Origins of European Dissent* (London: Allen Lane, 1977), and the collection of primary sources in Robert I. Moore, *The Birth of Popular Heresy* (London: Edward Arnold, 1975).

<sup>14</sup> Moore, *The First European Revolution*, pp. 1–2.

<sup>15</sup> *Ibid.*, p. 119.

<sup>16</sup> Harold Joseph Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983), p. 119.

<sup>17</sup> Walter Ullmann, *The Growth of Papal Government in the Middle Ages. A Study of the Ideological Relation of Clerical to Lay Power*, 2nd edn with minor corrections (London:



pontificate of Alexander III (1159–81), papal government became more complex, ambitious, and bureaucratic, creating a ‘new law’ through the surging uplift in the number of cases decided in the papal court. This new direction in legal decision-making, in the form of papal decretals, was to provide the ‘new law’ of the twelfth century.<sup>18</sup> This development was Europe-wide. But England received an unprecedented number of papal decretals; indeed some 387 papal decretals were sent by Alexander III to her shores.<sup>19</sup> Furthermore, law schools appeared, not just in Bologna, but in Pavia, Cologne, England, and southern France.<sup>20</sup>

The systematic and scientific penetration of legal jurisprudence into the lay and ecclesiastical elites of society coincided with a change from oral to written culture. As Michael Clanchy has described in relation to medieval England, the eleventh and twelfth centuries witnessed a period of brilliance in written culture, which transformed uses of literacy from being reliant on memory to an emphasis on written record.<sup>21</sup> The figures who featured in this change, which took England from the periphery of Latin culture to its apogee, were John of Salisbury and Geoffrey of Monmouth. The unique characteristic of this efflorescence of lay literacy, significantly, was that it ‘grew out of bureaucracy, rather than from any abstract desire for education or literature’.<sup>22</sup> Laymen, Clanchy argued, became more literate in order to cope with written business, initially, in England, with writs from the royal government, demanding information or money.<sup>23</sup> In other words, such literacy was required to deal with a society recently attuned to

Methuen, 1965), p. 373.

<sup>18</sup> Charles Duggan, ‘Papal Judges Delegate and the Making of the “New Law” in the Twelfth Century’, in *Cultures of Power: Lordship, Status and Process in Twelfth-Century Europe*, ed. by Thomas N. Bisson (Philadelphia: University of Pennsylvania Press, 1995), pp. 172–99.

<sup>19</sup> Charles Duggan, ‘Decretals of Alexander III to England’, in *Miscellanea Rolando Bandinelli, Papa Alessandro III*, ed. by Filippo Liotta and Roberto Tofanini (Siena: Accademia Senese degli Intronate, 1986), pp. 85–151 (p. 107).

<sup>20</sup> For the early histories of the law schools (other than at Bologna), see Winroth, ‘Origins of Legal Education’; James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), pp. 256–60, and Rudolf Weigand, *Die Naturrechtslehre der Legisten und Dekretisten von Irnerius bis Accursius und von Gratian bis Johannes Teutonicus*, Münchner Theologische Studien, III, Kanonistische Abteilung, 26 (Munich: Hueber, 1967).

<sup>21</sup> Michael T. Clanchy, *From Memory to Written Record: England 1066–1307*, 2nd edn (Oxford: Blackwell, 1993).

<sup>22</sup> Clanchy, *From Memory*, p. 19.

<sup>23</sup> *Ibid.*, p. 328.

legal matters. Even ostensibly non-official writings, such as theological and canonical scholastic *summae*, were, for this reason ‘practical’ — in the sense that they provided shortcuts for those who were ‘in a hurry’ or ‘unlearned’.<sup>24</sup>

This emerging literate, legal culture was the product of a class of clerics, embodied by Vacarius. The new pressures of secular business in the eleventh and twelfth centuries contrasted with the studied calm of monastic tradition. Evidence of this in literate use was demonstrated by the ‘book hand’, which developed in the twelfth century, and the cursive hand, which began to be used in the thirteenth century.<sup>25</sup> This did not merely reflect a stylistic alteration, so much as a change in the type of author: royal officials, who pioneered the use of writing in government, such as the justiciars of Henry II, Roger of Salisbury, and Herbert Walter (justiciar for Richard I and chancellor for King John) were *clerici*, rather than monks. These *clerici* were religious, but had a ‘little Latin’ so that they were able to conduct official business. They were not necessarily ‘literate’ in the sense of being learned in the classics and humanist knowledge, although, in the twelfth century this distinction between *clericus* and ‘literate’ became blurred.<sup>26</sup> Nevertheless, this shift towards ‘practical literacy’ reflected a change from the days of intellectual dominance by the charismatic monks, such as Bernard of Clairvaux, to a society whose intellectual outlook was set by bureaucrats such as John of Salisbury, and Vacarius.<sup>27</sup> The important nexus between the rise of this literate class of clerics and the universities is also borne out in the case of Vacarius and the beginnings of a university at Oxford.

It was from within this literate and legal society that Vacarius composed his textbook on Justinianic Roman law, the *Liber pauperum*. It contains key passages from the *Digest* and *Code*. The source for this law was the *Corpus iuris civilis*, compiled by Justinian and his legal advisers in the 530s, in four parts. First was the *Digest*, the fundamental Roman law text containing the opinions of learned jurists on all aspects of law, organized topically, in relation to things, persons, and actions. The *Institutes*, using the same scheme as the *Digest*, was aimed at beginners in the study of law. Together, the *Institutes* and *Digest* were designed to shape legal education and jurisprudence. Further, the *Code* contained imperial

<sup>24</sup> Clanchy, *From Memory*, p. 329. See also Brian Stock, *The Implications of Literacy: Written Language and Models of Interpretation in the Eleventh and Twelfth Centuries* (Princeton: Princeton University Press, 1983).

<sup>25</sup> Clanchy, *From Memory*, p. 329.

<sup>26</sup> *Ibid.*, pp. 226–30.

<sup>27</sup> *Ibid.*, p. 233.

legislation from the second- to the sixth centuries. A fourth text, the *Novellae* or *Novels*, is frequently included as part of the *Corpus iuris canonici*; it never formed a part of classical Roman law literature, but contained legislation added by Justinian's compilers. The discovery of the *Digest* in the late eleventh century in northern Italy, fuelled the desire for the renewed study of Justinianic Roman law in the twelfth century, for this text defined Roman law terms, discussed theoretical differences, cited court cases, and made the mass of legislation in the *Code* understandable and therefore useable.<sup>28</sup> It heralded the legal renaissance of the twelfth century.

### *The Liber pauperum*

Understanding Vacarius's law teaching centres around that work for which he is best known, the *Liber pauperum*, which is identified with introducing the renewed study of Roman law into England. There are seven extant manuscripts of the *Liber pauperum*, the most famous being Worcester Cathedral Library MS F.24, which formed the basis of De Zulueta's edition of the text.<sup>29</sup> Most of the

<sup>28</sup> This text of the *Digest* used by twelfth-century lawyers is called the *littera boniensis* or *vulgata*. It is based on an eleventh-century manuscript, called 'Secundus' by Mommsen, but now lost. The text of the *Digest* used in modern editions is based on a sixth-century manuscript first held at Amalfi, then at Pisa, and finally in the Laurentian Library in Florence; it is called the 'Florentine' text: see Stein's introduction in *The Teaching of Roman Law in England around 1200*, ed. by Francis De Zulueta and Peter Stein (London: Selden Society, 1990), p. xiii.

<sup>29</sup> The seven are: Worcester, Cathedral Library, MS F.24; Avranches, Bibliothèque municipale, MS. 142; Bruges, Bibliothèque Publique, MS. SB 375; Prague, Cathedral Chapter Library, Chapter MS. J.17; Kaliningrad, [repository unknown] MS 80 (formerly Königsberg MS); Leningrad, University Library, MS. lat. 4 (mistakenly located in Dorpat, namely Tartu, by Savigny), and Trier, Stadtbibliothek, MS. 842 (1636): see Stein's introduction in *The Teaching of Roman Law*, ed. by De Zulueta and Stein, pp. xxx–xxxii. See also De Zulueta's introduction to the *Liber pauperum* (but note he did not consider the Trier MS, which was subsequently identified by Feenstra and Weimar, and note also that De Zulueta thought the Leningrad MS to be Wenck's lost manuscript): *The Liber pauperum of Vacarius*, ed. by Francis De Zulueta (London: Selden Society, 1927), pp. xxiv, xxx–xxxviii. Hereafter, the text will be cited as '*Liber pauperum*' and the introduction/commentary as '*The Liber pauperum*, ed. by De Zulueta'.

manuscripts have been dated in their compositions to around 1200. In addition, some nineteen fragments also survive.<sup>30</sup>

The outline of the *Liber pauperum* is simple. It is a collection of passages from the texts of the *Digest* and *Code*. It comprises nine books, in roughly the same order as they are presented in the *Code*; the slight variations in order from the *Code* accommodate the titles from the *Digest* and other sources.<sup>31</sup> The titles within each book range in number from twenty-seven to eighty, and they are mostly taken from the *Code*. The *Liber Pauperum* had 472 titles, compared to 546 in the first nine books of the *Code* and 432 in the *Digest* (many titles were duplicated in the *Code* and the *Digest*). This method of epitomizing, by extracting and abbreviating texts from Justinian's *Code*, had been expressly prohibited in the prologue to that work.<sup>32</sup> Twelfth-century Bolognese glossators, too, reinforced this desire to retain the 'pure milk' of Justinian's code.<sup>33</sup> A short prologue prefaces the *Liber pauperum*, in which Vacarius gives a short discourse on jurisprudence. In it Vacarius justifies his epitome of the civil *corpus* on several bases: the cost for students in obtaining the entire Justinian corpus, the need for diffusing knowledge of the law, and the necessity of reaching an audience

<sup>30</sup> *The Liber pauperum*, ed. by De Zulueta, pp. xxvii–xxx; see also Stein's introduction in *The Teaching of Roman Law*, ed. by De Zulueta and Stein, p. xxxi. Fragments unearthed since 1927 have come to light, principally through the work of Neil Ripley Ker, *Fragments of Medieval Manuscripts used as Pastedowns in Oxford Bindings with a Survey of Oxford Binding, c. 1515–1620*, Oxford Bibliographic Society Publications, n.s., 5 (Oxford: Broome, 1954). One of these fragments is Oxford, All Souls, MS 50, which I have viewed; details appear in the bibliography.

<sup>31</sup> *The Liber pauperum*, ed. by De Zulueta, pp. xlvi–xlvi; see also Stein's introduction in *The Teaching of Roman Law*, ed. by De Zulueta and Stein, p. xiii.

<sup>32</sup> *Constitutio Deo auctore*, s. 12, in *Digest*, p. xiv. The *Constitutio Deo auctore* is the imperial decree which authorized the compilation of the *Digest*, enacted in December 530 CE and forming the first preface to the *Digest*. See also Andrew Borkowski, *Textbook on Roman Law*, 2nd edn (London: Blackstone, 1997), p. 59.

<sup>33</sup> *Liber pauperum*, Prologue, p. 1; Peter Stein, 'Vacarius and the Civil Law', in *Church and Government in the Middle Ages: Essays Presented to C. R. Cheney*, ed. by D. E. Luscombe and others (Cambridge: Cambridge University Press, 1976), pp. 119–37 (p. 128); repr. in *The Character and Influence of the Roman Civil Law: Historical Essays*, ed. by Peter Stein (London: Hambledon Press, 1988), pp. 167–85. Guareschi characterized Vacarius's legal orientation as 'Gosian' in its advocacy of the epitomized form, in contrast to the 'Irnerian' method, which insisted on retaining the integrity of the Justinian corpus: Massimiliano Guareschi, 'Fra canones e leges: Magister Vacarius e il matrimonio', *Mélanges de l'École française de Rome. Moyen Âge*, 3 (1999), 105–39 (p. 116).

comprising not just professional civil lawyers, but those ‘who did not use Roman law’.<sup>34</sup>

Discussion on the date of composition of the work begins with the findings of the editor, Francis De Zulueta, who dated the *Liber pauperum* to 1149. He based this on Robert of Torigny’s chronicle, which referred to the Italian’s work being composed in that year.<sup>35</sup> More controversially, De Zulueta affirmed this date by the absence in the *Liber pauperum* of any ‘fusion’ between Roman civil law and canon law, which was characteristic of the more ‘practical’ works of such masters as Johannes Bassianus (d. c. 1190) and Pilius, at the end of the twelfth century.<sup>36</sup> In this respect, he noted that the glosses of the *Liber pauperum* dealing with canon law were not part of the original plan, but were ‘post-Vacarian’. On this basis, De Zulueta argued that the *Liber pauperum* was ‘a purely civilian work’, namely a work of pure Justinianic Roman law.

In contrast, on the grounds that there are no references to the existence of the *Liber pauperum* before 1180 and no actual manuscripts until even later, Peter Stein argued that a date in the 1180s was likely.<sup>37</sup> If De Zulueta’s suggested composition-date of 1149 was correct, he argued, the *Liber pauperum* would have been the first work to comment on the *Tres libri*. The *Tres Libri* comprised the last three books of Justinian’s *Code* and was the last of Justinian’s *corpus* to be discovered; the books dealt with Byzantine administrative law.<sup>38</sup> That Vacarius would have chosen to use the *Tres Libri*, Stein argued, was highly unlikely, since they were the ‘least practical’ part of *Code* and unlikely to be of interest for the

<sup>34</sup> ‘...eis maxime qui legibus istis non utuntur’: *Liber pauperum*, Prologue, p. 2.

<sup>35</sup> *The Liber pauperum*, ed. by De Zulueta, pp. xv, xxi, xxv. For Robert’s chronicle, see below, for the discussion of Vacarius’s teaching at Oxford.

<sup>36</sup> *The Liber pauperum*, ed. by De Zulueta, p. xxiii.

<sup>37</sup> Peter Stein, ‘The Vacarian School’, *Journal of Legal History*, 13 (1992), 23–31 (p. 23).

<sup>38</sup> Smith believed that Vacarius’s *Liber pauperum* was the first commentary on Books Ten and Eleven of Justinian’s *Code*, which would date the *Liber pauperum* to c. 1150: see *Studies in the Glossators*, ed. by Kantorowicz and Buckland, p. 197; J. A. Clarence Smith, *Medieval Law Teachers and Writers: Civilian and Canonist* (Ottawa: University of Ottawa Press, 1975), p. 18. Stein and De Zulueta disagreed: see Stein’s introduction in *The Teaching of Roman Law*, ed. by De Zulueta and Stein, p. xxxiii; Peter Stein, *Roman Law in European History* (Cambridge: Cambridge University Press, 1999), p. 47; De Zulueta’s introduction in *The Liber pauperum*, ed. by De Zulueta, p. lxvi.

pragmatically-minded ‘smatterers’ of Roman law in England. Originality on this basis, therefore, seemed unlikely.<sup>39</sup>

Given that most of the manuscripts of the *Liber pauperum* date to around 1200, Stein’s argument makes sense. It is also supported by an analysis of the corpus of manuscripts comprising the text. In a seminal codicological analysis, Leonard Boyle argued that the *Liber pauperum* was composed in four different forms at three separate periods in the last quarter of the twelfth century.<sup>40</sup> The first version, which he called the ‘Vacarian’ *Liber pauperum*, contained extracts from the *Code* and *Digest* in the text space, with further extracts from these and other legal sources in the gloss space. That is, this version was un-glossed. Boyle dated this ‘Vacarian’ *Liber pauperum* to the late 1170s to 1180. This version, he noted, did not survive in the manuscripts. A second ‘student’ version contained the extracts from the *Digest* in the text space, but with glosses by students of their masters’ opinions in the gloss space; this version has survived in manuscripts and Boyle dated it to between the 1190s and 1200. This tradition, however, was independent of the texts composed by Vacarius. A third version, which Boyle labelled an ‘apparatus’ or *apparatus glossarum* of the *Liber pauperum*, contained no text at all but was entirely a gloss written in the same order as the text. This *apparatus* version comprised two stages: a first, plain set of explanatory *notae* and a second, longer, and more discursive *notae* replete with the opinions of the Four Doctors of Bologna. Such an *apparatus* was dateable to the thirteenth century.<sup>41</sup>

The substance of Boyle’s findings confirm that the *Liber pauperum* was in fact composed in these four different versions, none earlier than the late 1170s. With qualified acceptance of Boyle’s thesis, Stein noted that the main gloss spaces on the manuscripts of the so-called ‘Vacarian’ *Liber pauperum* were not necessarily occupied solely by texts. He believed that some glosses of an explanatory or classificatory (lemmatic) character were also originally included. More elaborate discussions of controversies, together with citations of modern authorities, he agreed with Boyle, had been left to a separate ‘apparatus’.<sup>42</sup>

It is worth noting that the *Liber pauperum* was insufficient in itself as a text by which a student could learn the elements of Roman law. It had to be supplemented. Vacarius would have assumed that a number of auxiliary

<sup>39</sup> *The Teaching of Roman Law*, ed. by De Zulueta and Stein, p. xxxiii.

<sup>40</sup> Leonard E. Boyle, ‘The Beginnings of Legal Studies at Oxford’, *Viator*, 14 (1983), 107–31 (p. 120).

<sup>41</sup> Boyle, ‘The Beginnings’, pp. 119–22.

<sup>42</sup> *The Teaching of Roman Law*, ed. by De Zulueta and Stein, p. xxxiii.

pedagogic texts would be appended to the *Liber pauperum*, including the text of the *Institutes*, an explanatory list of terms in the text of *Digest*, 50. 16, *de verborum significatione*, and another list of 211 useful rules and maxims from *Digest*, 50. 17 *de diversi regulis iuris antiqui*.<sup>43</sup>

Accordingly, it is necessary to consider the *Liber pauperum*, not as a static text, but as an organic and developing textbook designed to fit the needs of its students, and accommodate their increasing understanding of both Justinianic Roman law in particular, and legal procedure generally.

### *Law Teaching at Oxford*

The beginnings of the universities, that is, the development of institutionalized learning in the higher studies of law, theology, and medicine, was one aspect of Haskins's renaissance of the twelfth century.<sup>44</sup> This involved a transformation from a curriculum of the seven liberal arts, including the *trivium* and *quadrivium*, taught in monastic and cathedral schools and by individual masters, to a course of higher studies including canon and Roman law, the emerging discipline of theology, and the scientific study of medicine by specially trained masters to students organized into a corporate identity of mutual benefit. The earliest of these universities were at Bologna, Oxford, and Paris.<sup>45</sup>

It is a commonplace understanding that Master Vacarius is attributed with re-introducing the study of Roman law into England in the twelfth century, and for pioneering its study there as a jurisprudential science. Early scholarship also linked Vacarius to Oxford and to his beginning the scientific study of Roman law in England there in 1149. The first scholar to make this connection was the seventeenth-century jurist, John Selden, who arrived at this insight by correcting a phrase in John of Salisbury's *Policraticus* from '*vicarius noster*' to '*Vacarius*

<sup>43</sup> *The Teaching of Roman Law*, ed. by De Zulueta and Stein, p. xxxviii.

<sup>44</sup> Haskins, *The Renaissance*, pp. 368–89.

<sup>45</sup> Richard W. Southern, 'From Schools to University', in *The History of the University of Oxford, Volume I: The Early Oxford Schools*, ed. by Jeremy I. Catto (Oxford: Clarendon Press, 1984), pp. 1–36; Gillian R. Evans, 'The Influence of *Quadrivium* Studies in the Eleventh- and Twelfth-Century Schools', *Journal of Medieval History*, 1 (1975), 151–64, and Stephen C. Jaeger, *The Envy of Angels: Cathedral Schools and Social Ideals in Medieval Europe 950–1200* (Philadelphia: University of Pennsylvania Press, 1994). See also *The Universities of Europe in the Middle Ages by the Late Hastings Rashdall. A New Edition in Three Volumes*, ed. by F. M. Powicke and A. B. Emden, 3 vols (Oxford: Clarendon Press, 1936).

*noster*', thus identifying Vacarius as a teacher of Roman law in England.<sup>46</sup> Despite this insight, Selden, relying on an imperfect manuscript of Robert of Torigny, made the mistake of identifying Vacarius with Roger, abbot of Bec, and also confused him with the jurist Rogerius.<sup>47</sup>

For the seventeenth-century English legal humanist, Robert Wiseman, it was already a 'traditional' account that Roman law was brought into England by Theobald, Archbishop of Canterbury, and taught in Oxford by Vacarius.<sup>48</sup> In the late nineteenth century, Mauro Sarti, in his account of the famous teachers at Bologna, suggested that Vacarius was the promoter of the re-born study of Roman law in England.<sup>49</sup> Liebermann, Maitland, and Holland also linked Vacarius to Oxford.<sup>50</sup> This view was confirmed in De Zulueta's edition of the *Liber pauperum* in which the scholar re-evaluated the historical evidence.<sup>51</sup>

<sup>46</sup> John Selden, *Ad fletam dissertatio historica*, in *Ioannis Selden ad fletam dissertatio*, ed. and trans. by David Ogg (Cambridge: Cambridge University Press, 1925), p. 25. Although Roman law was taught in England in the seventh century at the school set up for churchmen by Theodore of Tarsus in Canterbury, this was reliant for its major source of reference on the encyclopaedic *Etymologiae* of Isidore of Seville, and so did not represent a 'serious study' of Roman law: see Stein, *Roman Law*, pp. 40–41.

<sup>47</sup> See Ogg's introduction in Selden, *Ad fletam dissertatio historica*, p. xxvii.

<sup>48</sup> Robert Wiseman, *The Law of Laws, or The Excellencie of the Civil Law above all Humane Laws whatsoever* (London: Printed for R. Royston, 1664), p. 125.

<sup>49</sup> Mauro Sarti and M. Fattorini, *De claris archigymnasii Bononiensis professoribus a saeculo XI usque ad saeculum XIV*, 2 vols (Bologna: Merlani, 1888–96), I, pp. 56–62.

<sup>50</sup> 'But this last circumstance weighs so strongly in favour of Oxford's claim that Gervase's statement seems right after all': F. Liebermann, 'Magister Vacarius', *English Historical Review*, 11 (1896), 305–14 (p. 309). See also F. Liebermann, 'Vacarius Mantuanus', *English Historical Review*, 11 (1896), 514–15; 'Magistrii Vacarii Summa De Matrimonio', ed. by Frederic William Maitland, *Law Quarterly Review*, 13 (1897), 133–42 (commentary), 270–87 (text). Another comment reads: 'That Vacarius taught Roman law in England there can be no doubt; [...] That he also taught at Oxford [...] is not so plain': Frederick Pollock and Frederic William Maitland, *The History of the English Law before the Time of Edward I*, 2nd edn, 2 vols (Cambridge: Cambridge University Press, 1898; repr. 1968), I, p. 118; Thomas Erskine Holland, 'The University of Oxford in the Twelfth Century', in *Collectanea*, ed. by Montagu Burrows, Oxford Historical Society, Series 2 (Oxford: Clarendon Press, 1890), pp. 137–92 (pp. 142–43, pp. 165–70); Thomas Erskine Holland, 'The Origins of the University of Oxford', *English Historical Review*, 6 (1891), 238–49 (p. 243).

<sup>51</sup> '...to doubt whether Vacarius ever taught at Oxford is to doubt against the evidence': *The Liber pauperum*, ed. by De Zulueta, pp. xvi–xvii; *L'Eresia di Ugo Speroni nella confutazione del Maestro Vacario: Testo inedito del secolo XII con studio storico e dottrinale*, ed. by Ilarino Da Milano, Studi e Testi, 115 (Vatican City: Biblioteca Apostolica Vaticana, 1945), pp. 86–89.



Following De Zulueta, it was generally accepted that Vacarius was the founder of legal studies in Oxford, and that his teaching activity took place there in the 1150s.<sup>52</sup> Although Poole and Rashdall expressed reservations about this thesis, it was not until the 1970s that Sir Richard Southern decisively reversed the consensus of opinion.<sup>53</sup>

Did Vacarius teach at Oxford before 1190? Southern has shown that, apart from Robert Pullen's teaching of theology in Oxford in the period 1133–37, the first clear evidence for institutionalized teaching at Oxford was in the 1190s, by which time there is clear evidence for a flourishing school of Roman and canon law there. Two Frisian brothers, writing in the mid 1190s, took down glosses from the lectures of a master, and copied out and studied the *Liber pauperum*, as well as other books of canon and civil law.<sup>54</sup> In addition, Simon of Sywell (Southwell), Honorius of Kent, and John of Tynemouth, all teaching at Oxford in the 1190s, left their opinions in glosses.<sup>55</sup> As shown above, the *Liber pauperum*

Hereafter the text will be cited as '*Liber contra*' and the commentary as '*L'Eresia di Ugo Speroni*, ed. by Da Milano'.

<sup>52</sup> John L. Barton, 'The Study of Civil Law before 1380', in *The History of the University of Oxford*, ed. by Catto, pp. 519–30 (p. 523); Ralph V. Turner, 'Roman Law in England before the Time of Bracton', *Journal of British Studies*, 15 (1975), 1–25 (p. 6); Ralph V. Turner, 'Who was the Author of Glanvill? Reflections on the Education of Henry II's Common Lawyers', *Law and History Review*, 8 (1990), 97–127 (p. 108).

<sup>53</sup> Reginald L. Poole, 'The Early Lives of Robert Pullen and Nicholas Breakespeare, with Notes on Other Englishmen at the Papal Court about the Middle of the Twelfth Century', in *Essays in Medieval History Presented to Thomas Frederick Tout*, ed. by A. G. Little and F. M. Powicke (Manchester: Manchester University Press, 1925), pp. 61–70 (p. 62, n. 5). Rashdall conceded that Vacarius taught at Oxford, but moved the likely date for this from 1149 to 1167, to coincide with the anti-Becket edicts in 1167: Hastings Rashdall, *The Universities of Europe in the Middle Ages*, 3 vols (Oxford: Clarendon Press, 1895; repr. London: Oxford University Press, 1936), II, Part 2, p. 335.

<sup>54</sup> Richard W. Southern, 'Master Vacarius and the Beginning of an English Academic Tradition', in *Medieval Learning and Literature: Essays Presented to R. W. Hunt*, ed. by J. J. G. Alexander and M. T. Gibson (Oxford: Clarendon Press, 1976), pp. 257–86 (pp. 267–70). See also *Emonis et Menkonis Chronicon Werumensium Chronica*, ed. by L. Wieland, MGH, Scriptores, 23 (Hanover: Hahn, 1874), pp. 467, 524, 531 [*Emonis Chronicon* for the period 1204–34, pp. 465–523; and *Menkonis Chronicon* for the period 1234–73, pp. 523–61]; Holland, 'The University of Oxford', pp. 175–76; *The Liber pauperum*, ed. by De Zulueta, p. xvii.

<sup>55</sup> Stephan Kuttner and Eleanor Rathbone, 'Anglo-Norman Canonists of the Twelfth Century', *Traditio*, 7 (1949–51), 279–358 (pp. 325–26); repr. as 'Retractiones VIII', in *Gratian and the Schools of Law 1140–1234*, ed. by Stephan Kuttner (London: Variorum, 1983), pp. 23–38;

stands as evidence for a school of law, possibly in the last quarter of the twelfth century, but certainly by the first decades of the thirteenth century. This fifty-odd year ‘gap’ in teaching at Oxford has intrigued scholars: was there in existence a centre of higher, institutionalized learning at Oxford prior to the 1190s?

The suggestion that Vacarius may have taught law at Oxford from 1149, and certainly before the end of the twelfth century, is supported by three contemporary or near-contemporary accounts, as well as the evidence of the *Liber pauperum* itself.<sup>56</sup> The first account is John of Salisbury’s *Policraticus*, written in 1159, at which time Vacarius would have been in his late thirties or mid-forties. The work referred to Vacarius being ‘silenced’ by King Stephen’s 1151 proscription of Roman law in Britain, implying that Vacarius had been teaching Roman law prior to this time, that is, in the late 1140s or 1150s.<sup>57</sup> The second source is an interpolation, dateable to no later than 1182 and subsequent to the original composition in 1154, of Robert of Torigny’s chronicle.<sup>58</sup> The interpolation referred to Vacarius as someone of ‘Lombard background’ (*gente Longobardus*), who came to England to teach Roman law in the year 1149 to classes of rich and poor students alike, with the assistance of his Roman law textbook, the *Liber pauperum*.<sup>59</sup> The third account is provided in Gervase of

Boyle, ‘The Beginnings’, p. 117; Leonard E. Boyle, ‘Canon Law before 1380’, in *The History of the University of Oxford*, ed. by Catto, pp. 531–64 (pp. 531–33).

<sup>56</sup> See Holland, ‘The University of Oxford’, pp. 142–43, 165–70; *The Liber pauperum*, ed. by De Zulueta, pp. xvii–xviii, and Southern, ‘Master Vacarius’, pp. 273–82.

<sup>57</sup> ‘Alios uidi qui libros legis deputant igni nec scindere uerentur, si in manus eorum iura peruenirent aut canones. Tempore regi Stephani a regno iussae sunt leges Romanae, quas in Britanniam domus uenerabilis patris Theobaldi Britanniarum primatis asciverat. Ne quis etiam libros retineret edicto regio prohibitum est et Vacario nostro inductum silentium; sed Deo faciente, eo magis uirtus legis inualuit quo eam amplius nitebatur impietas infirmare’: John of Salisbury, *Policraticus*, in *Iohanni Saresberiensis Episcopi Carnotensis Policratici*, ed. by C. C. J. Webb, 2 vols (Oxford: Clarendon Press, 1909), II, p. 399.

<sup>58</sup> Southern dates the interpolations to no later than 1182: Southern, ‘Master Vacarius’, p. 275.

<sup>59</sup> ‘Magister Vacarius, gente Longobardus, vir honestus et iuris peritus, cum leges Romanas anno ab incarnatione Domini MCXLIX in Anglia discipulos doceret, et multi tam divites quam pauperes ad eum causa discendi confluerent; suggestione pauperum, de codice et digesta excerptos novem libros composuit, qui sufficiunt ad omnes legum lites, que in scolis frequentari solent, decidendas, si quis perfecte noverit’: Robert of Torigny, *Chronicle*, in *Chronicles of the Reigns of Stephen, Henry II and Richard I*, ed. by R. Howlett, RS: 82, 4 vols (London: Longman, 1884–89), IV, p. 498.

Canterbury's *Actus pontificum cantuariensis ecclesiae*, written after Vacarius's lifetime, between the years 1205 and 1210.<sup>60</sup> It alone of these three sources connected Vacarius with Oxford, describing the Lombard master as the 'foremost' of teachers of Roman law and disputation in England, who taught at Oxford.<sup>61</sup>

Southern surveyed this evidence with scepticism. The only support in establishing a date for Vacarius's teaching at Oxford to the middle of the twelfth century was Gervase's account; this, Southern noted, was a later interpolation. In addition, he argued that, after the middle of the century, Vacarius became a man immersed in the practical life of government and no longer connected with the schools. Southern concluded, therefore, that there was no evidence for the existence of an institutionalized centre of learning at Oxford earlier than the 1190s, and probably not before 1193. The presence and popularity of the *Liber pauperum* as a textbook at Oxford from 1190 was not due to Vacarius himself being present there and lecturing on his own book, but rather the sheer utility of the *Liber pauperum* itself as a work which met the needs of law students at that time. Southern suggested a date of 1193 for the beginnings of a university in Oxford, when the war between the French and English kings resulted in the return of expatriate English students and masters, and prevented them travelling abroad.<sup>62</sup> In addition, he pointed to the significance of Oxford as a convenient location for the meeting of ecclesiastical courts because of its centrality in the Canterbury province. The logic, if not the chronology, of Southern's thesis followed the earlier arguments of Hastings Rashdall, who had posited that the origins of a university at Oxford began in the late 1160s, with the anti-Becket royal edicts proclaimed in 1167 forbidding the transferral of English clerics to Paris and recalling to England all having benefices in that country.<sup>63</sup>

<sup>60</sup> Southern, 'Master Vacarius', p. 281; Stein gives the date of c. 1199: Stein, 'Vacarius and the Civil Law', p. 12.

<sup>61</sup> 'Tunc leges et causidici in Angliam primo vocati sunt, quorum primus erat magister Vacarius. Hic in Oxenfordia legem docuit, et apud Romam magister Gracianus et Alexander, qui et Rolandus, in proximo papa futurus, canones compilavit': Gervase of Canterbury, *The Historical Works of Gervase of Canterbury*, ed. by William Stubbs, RS: 73, 2 vols (London: Longman, 1879–80), II, p. 385.

<sup>62</sup> Southern, 'Master Vacarius', pp. 270–72; Gerald of Wales, *Giraldi Cambrensis Opera*, ed. by J. S. Brewer, RS: 21, 8 vols (London: Longman, 1861–91), I, pp. 72–73.

<sup>63</sup> Rashdall, *The Universities of Europe*, II, Part 2, p. 335; *The Universities of Europe in the Middle Ages*, ed. by Powicke and Emden, III, p. 470.

Southern's account decisively shifted the onus of proof. It is now accepted by modern scholars that there is no link between Vacarius and Oxford prior to 1193. But Mayr-Harting's discovery of an Oxford witness list dateable to 1174–80, containing the names of 'many men learned in the law' (*plurimorum jurisperitum*), does point to the existence of an established centre of learning there at this time.<sup>64</sup> Rodney Thomson, citing evidence that Serlo of Wilton taught the *trivium* at Oxford in the 1150s (as well as the more advanced studies of dialectical theology), has suggested that an even earlier date may be possible for the beginnings of legal teaching at Oxford. He contends that such teaching, however, may not have been 'institutional' in Southern's sense of the word.<sup>65</sup> Other scholars, relying on sources like Daniel Morley and Gerald of Wales, have suggested that there was law teaching in England in the 1180s.<sup>66</sup>

Boyle suggested that the devotion of Oxford law students to Vacarius and the *Liber pauperum* was unintelligible without the physical presence there of Vacarius himself in the late 1170s or early 1180s. Evidence for this, he argued, lay in the 'Vacarian' version of the *Liber pauperum*. Further, his teaching may have continued between 1190 and 1200, as evidenced by students' glosses of his oral teaching (known as the 'student' version of the *Liber pauperum*). Finally, Boyle linked the *apparatus* to Oxford itself.<sup>67</sup> Stein agreed that the evidence of glosses in the *Liber pauperum* itself, as well as in other legal manuscripts, was a sign of

<sup>64</sup> Henry Mayr-Harting, 'The Role of the Benedictine Abbeys in the Development of Oxford as a Centre of Legal Learning', in *Benedictines in Oxford*, ed. by H. Wansborough and A. Marrett-Crosby (London: Darton, Longman & Todd, 1997), pp. 11–19, 270–80.

<sup>65</sup> Rodney M. Thomson, 'Serlo of Wilton and the Schools of Oxford', *Medium Aevum*, 68 (1999), 1–12 (p. 7).

<sup>66</sup> Daniel Morley's account in the 1180s lamented the decline in England of the liberal arts in favour of Roman law studies: Daniel of Morley, *Liber de naturis inferiorum et superiorum*, ed. by K. Sudhoff, *Archiv für die Geschichte der Naturwissenschaften und der Technik*, 8 (1918), 1–2; this also appears in Holland, 'The University of Oxford', pp. 171–72. See also Stein's introduction in *The Teaching of Roman Law*, ed. by De Zulueta and Stein, pp. xxxiv–xxxv. Gerald of Wales, writing in the 1180s, also lamented the decline of the arts in favour of the more lucrative cultivation of law, in an incident involving the clerical jurist Martin: Gerald of Wales, *Speculum ecclesiae*, Preface, in 'The Preface to the "Speculum ecclesiae" of Giraldus Cambrensis', ed. by Richard W. Hunt, *Viator*, 8 (1977), 189–202 (commentary), 203–13 (text) (p. 205). See also Hermann Kantorowicz and Beryl Smalley, 'An English Theologian's View of Roman Law: Pepo, Irnerius and Ralph Niger', *Mediaeval and Renaissance Studies*, 1 (1941–43), 237–52 (pp. 250–52); Eleanor Rathbone, 'Roman Law in the Anglo-Norman Realm', *Studia Gratiana*, 11 (1967), 253–71 (p. 253).

<sup>67</sup> Boyle, 'The Beginnings', pp. 120–21, 125.

formal teaching by Vacarius, although he argued that it did not necessarily occur at Oxford.<sup>68</sup> Furthermore, the course of lectures on Justinian's *Institutes*, attributed to Vacarius or another *pauperistae*, and composed in the 1190s, assumed that its student audience already had access to the *Liber pauperum*. As Kuttner and Rathbone rightly observed, such glosses were 'not the unstructured, leisurely observations of a country pastor', but indicative of formal discussion and lecturing.<sup>69</sup>

Despite the controversy surrounding Oxford as the locus of Vacarius's law teaching, there is no disputing that the *Liber pauperum* was the first legal textbook in England,<sup>70</sup> nor that it was Vacarius who introduced the reborn study of Justinianic Roman law into the Anglo-Norman realm.<sup>71</sup> As to when this occurred, opinion is again divided. Certainly, it was after the period 1143–49, the time in which Vacarius arrived in England, and, on the basis of Southern's analysis, it must have been by 1193 at the latest. Boyle's suggestion of the late 1170s to 1180s is persuasive in light of the evolution of the text of the *Liber pauperum* itself. As already established, whether the first site for Vacarius's teaching was Oxford is unclear; that Vacarius may have taught elsewhere in England is therefore an option. Northampton is one such possibility, with Vacarius himself confessing to having taught or studied there.<sup>72</sup> In a passing reference in the *Liber contra*, Vacarius described being present at Northampton for the purposes of either teaching or study, in theology or canon law, prior to composing this work.<sup>73</sup> Coincidentally, one of the few legal glosses outside

<sup>68</sup> Stein, 'The Vacarian School', p. 24; *The Teaching of Roman Law*, ed. by De Zulueta and Stein, pp. xxii–xxvii.

<sup>69</sup> Kuttner and Rathbone, 'Anglo-Norman Canonists', pp. 26–27.

<sup>70</sup> Southern, 'Master Vacarius', p. 257.

<sup>71</sup> Pierre Legendre, 'Recherches sur les Commentaires pré-Accursien (Ms. Magdalen Coll. 258)', *Tijdschrift voor Rechtsgeschiedenis*, 33 (1965), 353–429; Kuttner and Rathbone, 'Anglo-Norman Canonists', p. 34; *The Teaching of Roman Law*, ed. by De Zulueta and Stein, p. xxxiii.

<sup>72</sup> The following scholars support the view that Vacarius may have taught at Northampton: Southern, 'From Schools to University', p. 10; Massimiliano Guareschi, 'Gli incontri di un canonico legista: Magister Vacarius teologo e polemista', *Rivista di storia e letteratura religiosa*, 36 (2000), 381–414 (pp. 392–93); *The Teaching of Roman Law*, ed. by De Zulueta and Stein, pp. xxxvi–xxxvii; *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 89.

<sup>73</sup> '[...] apud Norhamptuniam, ubi degebam causa studendi': *Liber contra*, §19 [1], [d], p. 527. Southern interpreted the phrase as referring to Vacarius being a student (of theology): Southern, 'Master Vacarius', p. 261. But Kuttner and Rathbone ['Anglo-Norman Canonists', p. 322] drew the conclusion that Vacarius *taught* there.

manuscripts of the *Liber pauperum* to mention Vacarius, was originally in the possession of St Andrew's, in Northampton.<sup>74</sup> The *studium* of Northampton flourished briefly in the late twelfth century, as evidenced by Daniel of Morley, who, upon returning from Spain, found other places dominated by legal studies and repaired there as a place in which the arts were still studied, in preference to Oxford.<sup>75</sup> Stein has also considered Lincoln as a possible site, due to its proximity to Vacarius's epicentre of activity, namely Southwell and Norwell. The households of Canterbury and York also remain possible sites of Vacarius's teaching because of his employment and the presence of a group of educated men there.<sup>76</sup>

Vacarius's much-debated role in the beginnings of the university at Oxford will not occupy further space in this book. Whether or not Vacarius was the first to teach at Oxford is not important in the context of understanding his role in medieval intellectual culture; it is a far more certain conclusion that he was a pioneering legal educator in England in the mid- to late twelfth century. This pedagogical inclination, I will argue, forms a crucial motivation to the composition of both his legal and supra-legal works. His prime purpose in such works, including the *Liber pauperum*, was to instruct and find truth. This brings to mind the second major historiographical controversy concerning Vacarius's legal teaching, namely, whether he taught in a school of mixed canon and Roman law learning, that is, the *ius commune*.

<sup>74</sup> Kuttner pointed to a manuscript at St Andrews, containing the marginal entry '*mag va.*': Kuttner and Rathbone, 'Anglo-Norman Canonists', p. 34.

<sup>75</sup> Henry Gerald Richardson, 'The Schools of Northampton in the Twelfth Century', *English Historical Review*, 56 (1941), 595–610; Daniel of Morley, *Liber de naturis inferiorum et superiorum*, ed. by Sudhoff, pp. 1–2.

<sup>76</sup> Rashdall, *The Universities of Europe*, III, pp. 35–36. Guareschi, following Stubbs's line that the household of Archbishop Theobald, 'to some extent satisfied the want which was afterwards met by the university system', believed Theobald's *domus* was the likely location for this teaching. See William Stubbs, *Seventeen Lectures on the Study of Medieval and Modern History and Kindred Subjects. Delivered at Oxford, under the Statutory Obligation in the Years 1867–1884* (Oxford: Clarendon Press, 1887), p. 74; Stein's introduction in *The Teaching of Roman Law*, ed. by De Zulueta and Stein, pp. xxvi–xxvii.

### *Canon Law, Roman Law, and the Ius Commune*

The discussion and application of the principles of Justinianic Roman law did not develop independently from considerations of canon law in any meaningful way in the twelfth century, and vice-versa.<sup>77</sup> It is more accurate to understand the legal climate as a European Common Law, or *ius commune*, comprising, not only canon and Roman law, but feudal law as well.<sup>78</sup> Although the question of the *ius commune* has not before been considered directly with respect to Vacarius's legal teaching, the debate has long raged as to whether Vacarius taught, and whether his *Liber pauperum* provided for, a mixed school of canon and Roman law or one of Roman law only.

Beginning with isolationist arguments concerning English common law, legal historians have long questioned the closeness of the link between canon and Roman law. This issue was highlighted in the context of the Stubbs–Maitland debates on the influence of canon law, particularly papal authority, on England customary and ecclesiastical courts of the twelfth century. Maitland argued that English customary law followed the canon law of Rome, while Stubbs instead suggested that English law was *sui generis* and did not take its lead from canon law, except in a few matters, such as marriage.<sup>79</sup> The recent work of Richard Helmholz has chipped away at this latter view of isolation to demonstrate major areas of overlap, in such areas as the law of sanctuary, the law of compurgation, the customary law of mortuary offerings, and the jurisdiction of civil courts over

<sup>77</sup> Brundage, *Law, Sex, and Christian Society*, pp. 96–97; Pierre Legendre, *La pénétration du droit romain dans le droit canonique classique de Gratien à Innocent IV (1140–1254)* (Paris: Jouve, 1964); Bruno Paradisi, 'Diritto canonico e tendenze di scuola nei glossatori da Irnerio ad Accursio', in his *Studi sul medioevo giuridico* (Rome: Istituto storico italiano per il Medio Evo, 1987), pp. 525–656.

<sup>78</sup> Kenneth Pennington, 'Learned Law, Droit Savant, Gelehrtes Recht: The Tyranny of a Concept', *Rivista internazionale di diritto commune*, 5 (1994), 197–209; also published in *Syracuse Journal of International Law and Commerce*, 20 (1994), 205–15. The article is also available from <<http://faculty.cua.edu/pennington/learned.htm>> [accessed 28 August 2002].

<sup>79</sup> Eric Waldram Kemp, *An Introduction to Canon Law in the Church of England: Being the Lichfield Cathedral Divinity Lectures for 1956* (London: Hodder & Stoughton, 1957), pp. 11–13. Note that generalist studies have failed to mention Vacarius in their outline of the development of Roman civil and canon law in the twelfth century: for example: Smith, *Medieval Law Teachers*; John Frederick Winkler, 'Roman Law in Anglo-Saxon England', *Journal of Legal History*, 13 (1992), 101–27; George Derek Gordon Hall, *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill* (London: Nelson, 1965), p. xxvi.

the clergy.<sup>80</sup> Consistent with the ‘isolationist’ position of Stubbs, however, the consensus of opinion, beginning with De Zulueta, has held that the *Liber pauperum* was a work of ‘pure Roman law’ in its focus, with the references to canon law amounting to very little.<sup>81</sup> Further, De Zulueta concluded that the *Liber pauperum*, whilst a clear and independent exposition of the civil law typical of the early glossators of the Bolognese school, was not original.<sup>82</sup> Ullmann described Vacarius as a ‘hybrid Glossator’, that is, a precursor to the ‘post Glossators’.<sup>83</sup>

Boyle’s analysis of the manuscript tradition of the *Liber pauperum* has transformed debate on the *ius commune* and the *Liber pauperum* in a similar manner as did Winroth’s seminal work on Gratian’s *Decretum*. But Boyle’s analysis must be seen alongside Vacarius’s comments in the prologue to the work. As outlined earlier Vacarius justifies his use of selections from the civil law *corpus* on the basis that his work is meant for those ‘who did not use Roman law’.<sup>84</sup> Accordingly, Boyle argued, the *Liber pauperum* was intended for canonists as well as Roman lawyers.<sup>85</sup> Stein agreed in principle, suggesting that the *Liber pauperum* was created for ‘all those who aspired to be lawyers in England’, namely canonists, as well as ‘secular’ lawyers practising in ‘customary’ law.<sup>86</sup> In this way, Stein and Boyle perceived that the intended audience of Vacarius’s work extended beyond Roman lawyers to encompass the broader *ius commune* community.

<sup>80</sup> Richard H. Helmholz, *The Ius Commune in England: Four Studies* (Oxford: Oxford University Press, 2001).

<sup>81</sup> *The Liber pauperum*, ed. by De Zulueta, p. cxlviii. Somewhat surprisingly, Stein did not comment on this aspect: see Stein, ‘The Vacarian School’, pp. 23–31; see also his introduction in *The Teaching of Roman Law*, ed. by De Zulueta and Stein, pp. xxviii–xxxvii; Pollock and Maitland, *The History of the English Law*, 1, p. 119; Kuttner and Rathbone, ‘Anglo-Norman Canonists’, p. 287.

<sup>82</sup> *The Liber pauperum*, ed. by De Zulueta, p. cxlviii.

<sup>83</sup> Charles Casassa, ‘Magister Vacarius “Hic en Oxonefordia Legem Docuit”’: (1) An Analysis of the Dissemination of Roman Law in the Middle Ages’, available from <<http://english-www.hss.cmu.edu/history/dissemination-of-law.text.html>> [accessed 26 August 1999], pp. 1–10 (p. 5), citing Walter Ullmann, *The Medieval Idea of Law as Represented by Lucas de Penna: A Study in Fourteenth-Century Legal Scholarship* (London: Methuen, 1946), p. 57.

<sup>84</sup> ‘[E]is maxime qui legibus istis non utuntur’: *Liber pauperum*, Prologue, p. 2.

<sup>85</sup> Boyle, ‘The Beginnings’, p. 113.

<sup>86</sup> *The Teaching of Roman Law*, ed. by De Zulueta and Stein, p. xxx.



The prologue provides further evidence that the target audience of the *Liber pauperum* was not strictly Roman lawyers. Vacarius describes the purpose of the work as addressing the knowledge of what was just and good by reference, firstly, to 'natural law and reason', and second, to the 'law laid down to us by heaven'.<sup>87</sup> De Zulueta interpreted these phrases as 'natural law' and 'divine revelation' respectively; in other words, Vacarius sought knowledge of the moral law, that is, 'what was just and good', by the law of reason ('natural law'), as supplemented and reinforced by divine revelation.<sup>88</sup> Stein, on the other hand, understood the concepts as 'reason' and 'equity' respectively, both of which would be available to fill any gaps in the customary law of a country.<sup>89</sup> Thus, both referred to natural law or reason in combination with either equity or theology.

Boyle interpreted these phrases more literally; he suggested that 'the law laid down to us by heaven' was a reference to canon or ecclesiastical law. A similar interpretation has been attributed to Martinus Gosia, a possible teacher of Vacarius; the Gosians named canon law 'divine law' (*lex divina*), in contrast to Roman law, which was 'sacred law' (*lex sacra*).<sup>90</sup> In light of this terminology, Boyle concluded that the *Liber pauperum* 'was not a manual of Roman law as such, but an aid for beginners to the study and the equitable application of the canon law of the church'.<sup>91</sup> Boyle argued that Vacarius's teachings represented a late-twelfth-century mixed school of canon and civil law, with the *Liber pauperum* constituting a companion to the study of canon law, rather than being an object of study in its own right.<sup>92</sup> The *Liber pauperum* did not merely mix the

<sup>87</sup> '[Q]uod nephas esse naturali que inter omnes uersatur homines cognationis lege probatur. Cum et alia nobis lex sit posita celitus que nos omnes ad omnium uice mutua fraternum inuitat atque compellit obsequium': *Liber pauperum*, Prologue, p. 1. For a discussion on the relationship between natural law and divine law, see Rudolf Weigand, 'Das göttliche Recht, Voraussetzung der mittelalterlichen Ordnung', in *Chiesa diritto e ordinamento della 'Societas Christiana' nei secoli XI e XII: Atti della Chiesa della nona settimana internazionale di studi, Mendola, 28 agosto–2 settembre 1983*, Pubblicazioni dell'Università cattolica del Sacro Cuore, Miscellanea del Centro di studi medioevali, 11 (Milan: Vita E Pensiero, 1986), pp. 113–32.

<sup>88</sup> *The Liber pauperum*, ed. by De Zulueta, pp. xlv–xlvi.

<sup>89</sup> Stein, 'Vacarius and the Civil Law', pp. 128–29, 137.

<sup>90</sup> Boyle, 'The Beginnings', pp. 117–18.

<sup>91</sup> *Ibid.*, p. 118.

<sup>92</sup> *Ibid.*, p. 113.

teaching of canon and civil law, but integrated the two.<sup>93</sup> Boyle's view is consistent with the recognized interdependence and symbiotic relationship between canon and Roman law in the twelfth century, characterized by the notion of the *ius commune*.<sup>94</sup>

Reinforcing the idea that the *Liber pauperum* targeted a mixed school of canon and Roman law, and possibly customary law too, Stein has also argued for the existence of a 'Vacarian school' with its own unique legal method.<sup>95</sup> This Vacarian school, comprising the *pauperistae*, he suggested, placed an emphasis on system, on general notions applicable to more than one area of law (*generalia*), and procedure. As evidence of this, Stein noted that, in the Appendix to the *Liber pauperum*, Vacarius not only excerpted, but copied separately in full, the meanings of words and legal maxims for the purpose of these *generalia*. In contrast, earlier glossatorial scholarship confined the application of rules to one area of law, rather than applying one principle across several legal areas.<sup>96</sup> These features, particular to the Vacarian school, bridged the gap between Roman law and canon law, since they utilized the Roman law in a practical, and not merely academic, way. Of course, canon law had also developed its own special principles or *regulae iuris*.<sup>97</sup> As a result of these influences, Stein further suggested, the Vacarian school was indebted to the glossator Johannes Bassianus (fl. last quarter of the twelfth century), a student and follower of Martinus Gosia.

Bassianus's method of teaching Roman law by presenting the material in pro/contra form, called *brocardia*, also appears to have influenced Vacarius. Evidence of the earliest collections in England of *brocardia* date to after 1180 — and include the *Dolum per subsequentia purgari* — at which time Bassianus's works were highly regarded in England and well represented in English libraries.<sup>98</sup> These *brocardia* were lists of legal propositions and maxims, with Roman law texts both in favour of and against these legal principles. They were

<sup>93</sup> Ibid., pp. 107–31; Boyle, 'Canon Law before 1380', pp. 531–35.

<sup>94</sup> For an account of natural law in legists and decretists of the twelfth century, see Weigand, *Die Naturrechtslehre der Legisten und Dekretisten*.

<sup>95</sup> Stein, 'The Vacarian School', pp. 26–30.

<sup>96</sup> Stein, 'The Vacarian School', p. 26, n. 11.

<sup>97</sup> See Peter Landau, 'Die Bedeutung des kanonischen Rechts für die Entwicklung einheitlicher Rechtsprinzipien', in *Die Bedeutung des kanonischen Rechts für die Entwicklung einheitlicher Rechtsprinzipien*, ed. by Heinrich Scholler (Baden-Baden: Nomos, 1996), pp. 23–47.

<sup>98</sup> Stein, 'The Vacarian School', p. 26.

intended, like the list of *regulae* from *Digest*, 50. 17, which was appended as a pedagogic aid to the *Liber pauperum*, as a kind of summing-up of the doctrine of the whole codification. These held a particular attraction for English students like the *pauperistae*.

A further bridge between civil and canon lawyers in the *Liber pauperum* is provided by the topic of procedure. The genre of legal literature known as *ordines iudiciorum* or *iudicarii* has long been recognized as a topic of special interest to Anglo-Norman lawyers. These were tracts dealing with legal actions as a whole, or some aspect of them, such as defence. The first Roman law glossator to attempt this genre was Bulgarus, in his *Excerpta Legum* (1123–41), which was circulated widely in the twelfth century and became the model for many other *ordines iudicariorum* in Italy, France, Germany, and England.<sup>99</sup> An English example of this type of work is the so-called *Ulpianus de edendo*, composed in the 1160s or 1170s, consisting of material taken from the *Code* and regarded as a product of the Vacarian school by its similarity in form to the *Liber pauperum*.<sup>100</sup> A like work, the *Olim edebatur actio*, of Anglo-Norman origin and composed after 1177, is an extension of the *Ulpianus de edendo*.<sup>101</sup> It was only towards the end of the twelfth century that these *ordines* became less dependent on Roman civil law and more focused on canon law. Stein reasoned that English lawyers needed such tools to qualify them for legal practice, both in the secular and ecclesiastical courts.<sup>102</sup> Rather than burdening themselves with the large works of the Bolognese school, these lawyers both demanded and produced for themselves a ‘home-grown’ kit which the English manuscripts indicate would have included some or all of the following: the *Liber pauperum*, which comprised its basic text; the *Institutes*, usually with accompanying glosses; the last two *Digest* titles, 50. 16 and 50. 17, the latter with an *apparatus*; the *Olim edebatur actio*; and the *Dolum per subsequentia purgari*.<sup>103</sup>

<sup>99</sup> Linda Fowler-Magerl, *Ordo iudicorum vel ordo iudicarius: Begriff und Literaturgattung*, Ius Commune: Veröffentlichungen des Max-Planck-Instituts für Europäische Rechtsgeschichte Frankfurt am Main, Sonderhefte Texte und Monographien, 19, Repertorien zur Frühzeit der gelehrten Rechte (Frankfurt: Vittorio Klostermann, 1984), p. 35.

<sup>100</sup> Fowler-Magerl, *Ordo iudicorum*, p. 65.

<sup>101</sup> *Ibid.*, p. 73.

<sup>102</sup> Stein’s introduction in *The Teaching of Roman Law*, ed. by De Zulueta and Stein, pp. xl–xliii.

<sup>103</sup> *Ibid.*, p. xliii.

Vacarius may have been a student of one of the four pupils of Irnerius to become known as the ‘Four Doctors’. After Irnerius, they together founded and established a school of glossatorial Roman law at Bologna. Scholarship has traditionally grouped twelfth-century glossators into either the ‘orthodox’ school, led by Bulgarus, or the ‘liberal’ stream led by Martinus Gosia, whose followers were known as the ‘Gosiani’.<sup>104</sup> In terms of these two dominant schools of twelfth-century Roman law, Vacarius is a clear follower of Martinus Gosia and his successor Bassianus. Whereas Bulgarus and his adherents concentrated their attention exclusively on the civil law, and tended to ignore canon law as hardly worthy of their attention, Martinus recognized the authority of canon law, both in terms of its importance in practice and because it was the *lex divina*. Martinus was prepared to accept that, in cases where Justinianic-Roman law came into conflict with canon law, the latter would prevail.<sup>105</sup> Thus, while not explicitly a canonist or mixed Roman-canonist school, Vacarius’s Roman law teaching nevertheless acknowledged the links between the two: his distinct Gosian sympathies ensured this.

A more subtle link between canon and Roman law is evident in the *Liber pauperum* by way of two groups of glosses in Title 8 of Book 1 on legislative and interpretative function and custom respectively.<sup>106</sup> The first group of glosses, on interpreting and making law, adopts the consensus view, held by most glossators, that the emperor was the sole maker and interpreter of the law. Although (somewhat surprisingly) Vacarius does not cite the supporting maxim from *Digest*, 1. 4. 1: ‘That the decision given by the Emperor has the force of a statute’, he implicitly adopted such a view. But Vacarius mollified this ostensibly pro-monarchical viewpoint by noting that the emperor, in interpreting law, could consider equity, while a judge could not. Further, the emperor was subject to the laws, though it was true that no one could coerce him and his submission was voluntary.<sup>107</sup> In addition, on the issue of the proof of custom by decided cases,

<sup>104</sup> Stein noted that Vacarius was not an uncritical adherent of the Gosiani, and even on occasion followed Bulgarus’s view: Stein, ‘Vacarius and the Civil Law’, pp. 122–24.

<sup>105</sup> Stein, ‘Vacarius and the Civil Law’, pp. 126–27.

<sup>106</sup> *Liber pauperum*, 1.8, pp. 12–19. See especially Stein’s introduction in *The Teaching of Roman Law*, ed. by De Zulueta and Stein, pp. lxxiii–lxxviii. Also see Casassa, ‘Magister Vacarius’, p. 6.

<sup>107</sup> “legibus”: [...] Conditor autem leges et interpres legum solus est imperator. Observare autem leges debent tam ceteri quam imperator. Sed ipse ex propria uoluntate, ceteri ex necessitate’: *Liber pauperum*, 1.8, p. 13 (gloss to rubric); “constitutione”: Sed iudicis

Vacarius equates interpretation by custom with interpretation by the emperor.<sup>108</sup> In this way, the interpretation of the emperor (and therefore of custom) was of universal force, while that of the judge was binding only between the parties. This view of equity was substantially in agreement with Irnerius and the other glossators.<sup>109</sup> Thus, in circumstances calling for the intervention of equity in the law, Vacarius embedded the notion of custom within the emperor's equitable discretion.

Furthermore, in amplifying the notion that equity, rather than the letter of the law, ought to be applied, Vacarius distinguished two types of equity. As the jurist Martinus had done, Vacarius saw equity as a precept of 'natural justice' (*equitas rudis*) and as 'underlying equitable principles of positive law' (*equitas constituta*).<sup>110</sup> Stein alternatively describes these as 'rough equity', or the general idea of fairness (*equitas rudis*), as opposed to 'institutional equity', the underlying equitable principles to be derived from the law as a whole (*equitas constituta*). Although agreeing with Martinus on this distinction and the preference for both to be applied over *ius strictum*, however, Vacarius's gloss differed somewhat, holding that only the emperor could apply *equitas rudis*, while a judge could apply *equitas constituta*.<sup>111</sup>

interpretatio unius de qua cognoscit tantum cause, imperatoris uero et consuetudinis interpretatio perpetua est, similium quoque causarum fata componens': *Liber pauperum*, 1.8, p. 13 (gloss to *Digest*, 1.3.11, p. 6); "equitatem": Tunc inter equitatem iusque interposita interpretatio creditur quando eorum dissonantie penitus querelam soluit. Iudicis igitur interpretatio, licet inter litigantes litem interdum dirimat, interposita inter equitatem et ius dici non debet, quoniam in aliis non preiudicat': *Liber pauperum*, 1.8, p. 16 (gloss to *Code*, 1.14.1, p. 67).

<sup>108</sup> *Liber pauperum*, 1.8, p. 13 (gloss to *Digest*, 1.3.11, p. 6). See also '(ii) Solis. id est, non alia persona propter consuetudinem. (iii) "interpositam": scilicet que sit interposita. "solis" sq.: et non alie persone, nam et consuetudo optima est legum interpres': *Liber pauperum*, 1.8, p. 16 (gloss to *Code*, 1.14.1, p. 67).

<sup>109</sup> Paul Vinogradoff, *Roman Law in Medieval Europe*, 2nd edn (Oxford: Clarendon Press, 1929), pp. 62–69; *The Liber pauperum*, ed. by De Zulueta, p. lxxv.

<sup>110</sup> 'Hic de equitate constituta. Ibi de rudi. Sed hoc esset potius ius iuri preferri, nec ideo quod esset equitas, sed quia nouissimo loco constituta. Noc dicimus etiam rudem equitatem iuri preferendam ubi apparuerit. Ideoque necessariam principis interpretationem, ut non dubitetur et ad similia producat': *Liber pauperum*, 1.8, pp. 69–70, n. 24 (gloss to *Code*, 8, p. 331). See also *The Liber pauperum*, ed. by De Zulueta, p. lxxv.

<sup>111</sup> Stein, 'Vacarius and the Civil Law', p. 129.

On the second issue of whether custom could abrogate law, Vacarius provides a unique viewpoint.<sup>112</sup> This was a longstanding issue in the *Corpus iuris civilis*, which permitted custom to modify the law by interpretation, but gave a different view on whether custom could abrogate law.<sup>113</sup> Irnerius provided a compromise: custom could abrogate law if the custom was made with knowledge of its inconsistency with the law, but not if it was made in ignorance of its incompatibility with the law. In contrast, Vacarius held that custom could abrogate law whether or not it was made with knowledge of this discrepancy, because custom derived from the will of the people (*consensus populi*); so long as these people were not in error as to the 'matter' (*res*) of the custom being abrogated, their will ought to have been effective.<sup>114</sup> The analogy Vacarius uses is from the private law of contracts.<sup>115</sup> This law, he indicates, did not draw its authority from the written form; it was the will of the people which gave law its force, and so law could abrogate custom just as custom could abrogate law.<sup>116</sup>

Stein believed that Vacarius's thought on the relationship between custom and law was an original jurisprudential contribution to Roman law: whereas normally he followed Martinus Gosia, and occasionally Bulgarus, in this matter

<sup>112</sup> For the following discussion, see *The Liber pauperum*, ed. by De Zulueta, p. lxxv; Stein, 'Vacarius and the Civil Law', p. 129.

<sup>113</sup> *Liber pauperum*, 1.8, p. 15 (*Digest*, 1.3.32.1, p. 6); cf. p. 15 (*Code* 8.52 (53).2), p. 362.

<sup>114</sup> '(I) "tacito consensu": Generale et nature congruum est ut eo modo solutur quid quo constructum est. Imperatoris autem constitutionem inuito populo, immo etiam reclamante interdum, fieri contingit et ualet. Ergo et durat, ut nec per desuetudinem abrogari possit, nisi prius imperium et potestatem a principe amotam populus recipiat. (ii) "omnium": Legem non ignorantium secundum quosdam, ne error impediatur consensum. Sed quid nocere potest error qui rem penitus non contingit nec circa eam uersatur? Quemadmodum si emisses a me rem quam alii uendidissem te ignorante. Nam isto errore non inpediretur consensus': *Liber pauperum*, 1.8, p. 15 (gloss to *Digest*, 1.3.32.1, p. 6); '(I) "errore": Rationis. Similiter ergo et legis errore interueniente, licet in similibus non obtineat, ualebit tamen consuetudo contra legem ut abrogare eam possit': *Liber pauperum*, 1.8, p. 15 (gloss to *Digest*, 1.3.39, p. 6); '(I) "rationem": Sed nec scripta lex uincit rationem. [L]ex tamen et consuetudo tam rationem quam legem derogant uel abrogant': *Liber pauperum*, 1.8, p. 15 (gloss to *Code*, 8.52 (53), p. 362). See *The Liber pauperum*, ed. by De Zulueta, p. lxxv; Stein, 'Vacarius and the Civil Law', p. 129.

<sup>115</sup> *Liber pauperum*, 1.8, p. 15, n. 29 (gloss to *Digest*, 1.3.32.1, p. 6).

<sup>116</sup> Stein noted that, in England, the general view was that custom prevailed over imperial law, based on the glosses on custom in Vacarius's *Liber pauperum*, which went further than any continental gloss in supporting the validity of custom and thus gave a theoretical foundation to the new customary common law developed by the king's courts: Stein, *Roman Law*, p. 63.

he was his 'own man'.<sup>117</sup> This Vacarian gloss, Stein noted, is repeated in the anonymous *Lectura ad Institutiones*, and in glosses to a late-twelfth-century-copy of Gratian's *Decretum*.<sup>118</sup> In addition, a late-twelfth-century copy of Gratian's *Decretum* contains a gloss quoting Vacarius on custom to this effect.<sup>119</sup> De Zulueta, however, undercut these apparently noble republican views of Vacarius, by noting that he made a 'fatal mistake' in applying contractual principles to the enactment of imperial statutes; these, in fact, were never enacted by the 'will of the people', and, indeed, were sometimes in defiance of popular protest. Therefore, an imperial statute could not be abrogated by popular consent as expressed in custom.<sup>120</sup>

Casassa argued that Vacarius attempted, in such glosses as these and in his works in general, to justify the application and teaching of Roman law in a country where customary law played a great role. Vacarius, he noted, stressed the logic of the *Corpus iuris civilis* by condensing it and arranging it for the unpractised pupil. Although not directed towards solving specific legal disputes, the work accommodated practical needs by making the Roman law more accessible. The *Liber pauperum*, in this way, embodied a growing medieval trend towards the accommodation of theory into practice.<sup>121</sup>

Stein saw, in this practicality and intended utility, a deliberate attempt by Vacarius to link customary, Roman, and canon law:

Vacarius contributed to the climate of opinion in which it was natural for canonists to call on the civil law to eke out any gaps in their own law [...] Similarly the Vacarian

<sup>117</sup> Stein, 'Vacarius and the Civil Law', pp. 129–30; Charles Duggan, 'The Reception of Canon Law in England in the Later Twelfth Century', in *Proceedings of the Second International Congress of Medieval Canon Law*, ed. by Stephan Kuttner and J. Joseph Ryan, Monumenta Iuris Canonici, Series C, Subsidia 1 (Vatican City: Biblioteca Apostolica Vaticana, 1965), pp. 359–90 (p. 337).

<sup>118</sup> *Lectura ad Institutiones*, 1.2.11, in *The Teaching of Roman Law*, ed. by De Zulueta and Stein, pp. 11–12. See also London, British Library, MS Royal 4.B.iv; 'Glosses to the *Decretum*': Cambridge, Gonville and Caius College, MS 676/283, fol. 4<sup>v</sup>. See Stein, 'Vacarius and the Civil Law', pp. 129–30.

<sup>119</sup> ' [...] Vac. dicit quod consuetudo populi in contrarium nitentis [?] tollit legem set non uincit': [glosses to the *Decretum*] in Cambridge, Gonville and Caius College, MS 676/283, fol. 4<sup>v</sup>, D. 11 c.4, cited in: Kuttner and Rathbone, 'Anglo-Norman Canonists', p. 318, n. 7a. See Stein, 'Vacarius and the Civil Law', pp. 129–30.

<sup>120</sup> *The Liber pauperum*, ed. by De Zulueta, p. lxxvi.

<sup>121</sup> Casassa, 'Magister Vacarius', p. 6.

approach to law forced the common lawyers to give their customary law some structure and to organise it in a coherent way.<sup>122</sup>

This line of argument is consistent with the claims of many scholars that Roman civil law provided an 'organisational tool' which assisted the development of English common law,<sup>123</sup> particularly with regard to the development of actions and procedure.<sup>124</sup> Stein concluded that this method of Vacarius bore fruit in the treatise of Bracton, composed in the late 1230s,<sup>125</sup> which exemplified precisely the characteristic features of the Vacarian school,<sup>126</sup> as well as the work of Glanvill, completed in 1187–89.<sup>127</sup> Indeed, Stein concluded, the Lombard master conceived of Roman law as a 'universal jurisprudence' whose principles underlay all systems of law.<sup>128</sup>

### Conclusion

Boyle rightly saw Vacarius's teaching and knowledge of *utriusque iuris* as consistent with the existence of a 'practical' school of canon law at Oxford in the 1170s and 1180s. This need for practicality, occasioned by the flood of papal decretals to England, as well as Oxford's strategic location as the meeting place for ecclesiastical courts from the 1170s, demanded the adoption of principles of procedure and the like for the equitable application of the canons of the

<sup>122</sup> Stein, 'Vacarius and the Civil Law', p. 136.

<sup>123</sup> Vinogradoff, *Roman Law*, pp. 62–69, and Stein, 'Vacarius and the Civil Law', p. 136.

<sup>124</sup> Pollock and Maitland, *The History of the English Law*, 1, pp. 116, 134, and Stein, 'The Vacarian School', pp. 29–31.

<sup>125</sup> Stein, *Roman Law*, p. 64.

<sup>126</sup> Stein, 'Vacarius and the Civil Law', p. 136. Note Smith's erroneous view that there were traces of Bracton in the *Lectura*: Smith, *Medieval Law Teachers*, p. 35; Vinogradoff, *Roman Law*, pp. 62–69, 97, 101, and Pollock and Maitland, *The History of the English Law*, 1, pp. 207–08.

<sup>127</sup> While the evidence indicates Glanvill's law code was completed between 1187 and 1189, there is some reason to suppose that parts of it at least were written some time earlier: Hall, *The Treatise on the Laws*, p. xi; Stein, 'Vacarius and the Civil Law', pp. 136–37; Stein, 'The Vacarian School', p. 30.

<sup>128</sup> Stein, 'The Vacarian School', p. 136.



*Decretum* in everyday cases. The *Liber pauperum*, with its distillation of passages from the *Code* and *Digest*, provided for just this need.<sup>129</sup>

The application of the *Liber pauperum* beyond the realm of Justinianic Roman law, to a wider and more general use, mirrored a tendency begun by Bolognese glossators from Pepo and Irnerius onwards. The broader approach engendered by these jurists accommodated law into the general scheme of knowledge. Whereas the traditional view, exemplified by Isidore of Seville, was to categorize law under the rubric of ethics, since it dealt with human behaviour, the Bolognese glossators held that, insofar as it concerned the interpretation of words in a text, law was part of logic.<sup>130</sup> Thus, law was a higher study only to be undertaken by those who had graduated from the arts of the *trivium*, namely logic, grammar, and rhetoric.

The *Liber pauperum* demonstrated that Vacarius, when teaching law, was conscious of the societal changes taking place, which would characterize his century as the 'legal century'. The implicit acceptance of the cross-over between canon and Roman law, the notion of the *ius commune*, is apparent in Vacarius's legal text. The importance of the *Liber pauperum* on law and theology did not diminish once Vacarius found employment in the English ecclesiastical bureaucracy. In contrast, the 'universal jurisprudence' which he applied to law enabled him to bring to bear a unique hermeneutic on such topics as marriage law and the explanation of the human nature in Christ. Such a hermeneutic was not in the manner of the novelties in language that Abelard introduced and which was perceived as threatening to social and ecclesiastical order. Instead, it sought to maintain order and the status quo. It is to the notion of marriage that I will turn in the next chapter, so as to illustrate Vacarius's concern to rationalize and justify the existing social order.

<sup>129</sup> Boyle, 'The Beginnings', p. 118.

<sup>130</sup> Stein, *Roman Law*, p. 46.



## THE LAW OF MARRIAGE

While I examined Vacarius's search for universality in the teaching of the *ius commune* in the previous chapter, this chapter examines his attempts, in a similar way, to apply such law to a topic spanning across both law and theology: namely marriage.

Vacarius's views on marriage are revealed through his *Summa de matrimonio*, in particular, although other sources provide useful information, including the fifth book of his *Liber pauperum*, as well as the records of decisions from several legal cases in which he was involved directly or indirectly, either as papal judge delegate or ecclesiastical official for the archbishops of York and Canterbury. The issue of marriage was of great moment to Vacarius, not simply because of his role as decision-maker and official in the courts, but because of the contentious notion of what exactly constituted marriage in the second half of the twelfth century; this was an issue preoccupying canon lawyers in particular, as well as theologians. Vacarius's thoughts on marriage were formulated, accordingly, against a background of doctrinal and epistemological flux.

### *Part I: Background*

#### **Introduction**

The *Summa de matrimonio* deals with Vacarius's analysis of the two competing marriage-formation theories in the twelfth century: the consummation model and the consensual model. In his critique of these two theories, Vacarius introduced the notion of *traditio*, a concept which has been intrigued historians. Vacarius also applied this debate to the issues arising from the dissolution of marriage, as well as dealing with the understanding of the sacrament in marriage.

I will examine, not only Vacarius's unique doctrine of marriage, but the very methodology he employed in dealing with the issue.

### Dating the *Summa de matrimonio*

The dating of the *Summa de matrimonio* has been the subject of controversy. Only one manuscript of the treatise, a scribe's copy, is extant, held at Cambridge University Library.<sup>1</sup> It is a thirteenth-century manuscript originally from the Cistercian abbey of Biddlesden in Buckinghamshire, north of Oxford. Its modern editor, Frederic W. Maitland, assigned it a date around 1156. He argued that, because Vacarius's treatise showed familiarity with the *Summa* of Rufinus, an Italian canonist, it could not be dated earlier than 1156 — the date for that canonist's work.<sup>2</sup> André Gouron has subsequently re-dated Rufinus's *Summa decretorum* to the period 1164–65, so it is safe to assume that Maitland today would brook no dissent with a *terminus a quo* of 1164, despite settling on a date of c. 1156.<sup>3</sup>

Maitland pointed to evidence relevant to the work's *terminus ad quem*, namely its assumption that 'the grand marriage question was still open', not to mention its lack of reference to the 'epoch-making' marriage decretals of Alexander III (1159–1181).<sup>4</sup> Stein has suggested a date of 1170, presumably on the

<sup>1</sup> Cambridge, University Library, MS li.3.9.1773, fols 152<sup>v</sup>–158<sup>r</sup>.

<sup>2</sup> 'Magistri Vacarii Summa De Matrimonio', ed. by Frederic William Maitland, *Law Quarterly Review*, 13 (1897), 133–42 (commentary), 270–87 (text) (pp. 139–40). Hereafter the text will be cited as '*Summa de matrimonio*' and the commentary as "'Magistri Vacarii'", ed. by Maitland.

<sup>3</sup> André Gouron, 'Sur les sources civilistes et la datation des *Sommes* de Rufin et d'Étienne de Tournai', *Bulletin of Medieval Canon Law*, n.s., 16 (1986), 55–70; André Gouron, 'Une école de canonistes anglais à Paris: Maître Walter et ses disciples', *Journal des savants* (2000), 47–72. Pennington and Weigand fix on the date 1164: Kenneth Pennington, 'Learned Law, Droit Savant, Gelehrtes Recht: The Tyranny of a Concept', *Rivista internazionale di diritto comune*, 5 (1994), 197–209; also published in *Syracuse Journal of International Law and Commerce*, 20 (1994), 205–15. The article is also available from <<http://faculty.cua.edu/pennington/learned.htm>> [accessed 28 August 2002]; Rudolf Weigand, 'Magister Rolandus und Papst Alexander III', *Archiv für Katholisches Kirchenrecht*, 149 (1980), 3–44 (pp. 10–11, 20); Rudolf Weigand, 'Frühe Kanonisten und ihre Karriere in der Kirche', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte / Kanonistische Abteilung*, 76 (1990), 135–55.

<sup>4</sup> 'Magistri Vacarii', ed. by Maitland, p. 140.

basis that Alexander's decretals were made in that year.<sup>5</sup> The date of Alexander's decretals, however, is itself a matter of debate. Dauvillier has shown that Alexander, after passing through four different stages of policy-making on marriage formation, concluded with a 'definitive period' from around 1177–81.<sup>6</sup> At this time, Alexander settled on a definite marriage doctrine, namely that present consent, including *sponsalia de praesenti*, freely given by a man and a woman, both capable of marriage, was binding, and formed a final marriage which was indissoluble during the lives of the contracting parties, except in unusual circumstances. Second, he held that future consent, or *sponsalia de futuro*, was also binding, if followed by sexual intercourse between the parties. Alexander effectively confirmed the primacy in canon law of the consensual doctrine of Peter Lombard, although with some added elements of the consummation doctrine of Gratian and the decretists.<sup>7</sup>

Other internal evidence is suggestive of a *terminus ante quem*. The 'informal manner in which the authorities that lie in the *Decretum*' were cited by Vacarius, for Maitland, supported an 'early' date close to 1156. Canonists of the late twelfth century, he ventured, would have quoted the work by its distinction, case, and question. Further, it was 'doubtful' that Vacarius had before him the *Decretum* complete with passages of the *paleae*, given his manner of referring to them.<sup>8</sup> The *paleae* were the more than 150 canons interpolated into the text of the *Decretum* by masters at Bologna; they have been attributed to the decretist Paucapalea. Winroth, however, has established that Paucapalea wrote his *Summa* after the second recension of the *Decretum*, that is between 1146 and the 1150s.<sup>9</sup> So, Maitland's suggestion that Vacarius may have been using the 'early' or 'Gratian

<sup>5</sup> See Stein's introduction in *The Teaching of Roman Law in England around 1200*, ed. by Francis De Zulueta and Peter Stein (London: Selden Society, 1990), p. xxxiii.

<sup>6</sup> Jean Dauvillier, *Le Mariage dans le droit classique de l'Église depuis le décret de Gratien (1140) jusqu'à la mort de Clément V (1314)* (Paris: Recueil Sirey, 1933), pp. 15–32. Donahue has accepted this analysis, with some modifications: Charles Donahue, 'The Dating of Alexander III's Marriage Decretals: Dauvillier Revisited after Fifty Years', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte / Kanonistische Abteilung*, 99 (1982), 70–124.

<sup>7</sup> Donahue, 'The Dating of Alexander III's Marriage Decretals', pp. 251–52, 280–81.

<sup>8</sup> 'Magistri Vacarii', ed. by Maitland, p. 140.

<sup>9</sup> Anders Winroth, *The Making of Gratian's Decretum* (Cambridge: Cambridge University Press, 2000), pp. 141, 178. Maitland believed that Vacarius did not have the *paleae* before him when composing his work: 'Magistri Vacarii', ed. by Maitland, pp. 139–40.

I' text is not supportable on this basis, and his suggestion of an early date in the 1150s less likely.

If, then, the work was composed no earlier than 1164 and no later than 1181, can a more exact date be found? I believe a date between 1166 and 1170 is likely, since this period coincides with Vacarius's professional involvement in canon law, in particular, matrimonial disputes. He served as a papal judge delegate from 1165 onwards, while at the same time holding down his position in the household at York under Roger until 1181. In addition, he travelled to Paris as a messenger for Roger in 1164, an opportunity for him to acquire a knowledge of the Parisian theologians' views, as well as the canon law treatises of Gratian and the decretists, if they were not available to him in England.<sup>10</sup> From 1164 to 1167, in addition to his ecclesiastical and judicial functions, he became canon of Southwell and prebendary of Norwell; thus, pastoral concerns may well have weighed heavily, demanding from him more than an 'academic' approach to the marriage question.<sup>11</sup>

### Outline of the *Summa de matrimonio*

Vacarius begins his treatise with an explanation of the reason for its composition: the love of truth and the common good.<sup>12</sup> He is concerned with a matter which is of no little consequence, but, indeed, is an issue dealt with by many masters who provide no useful guidance: the union and dissolution of marriage. And, as he points out, it is dealt with in one way in canon law and another way at secular law, although the definition of marriage is in each law the same.<sup>13</sup> The issue that causes the most difficulty is the joining and dissolving of marriage, mostly by

<sup>10</sup> *Materials for the History of Thomas Becket, Archbishop of Canterbury*, ed. by J. C. Robertson and J. B. Sheppard, RS: 67, 7 vols (London: Longman, 1875–85), pp. 498–500.

<sup>11</sup> Richard W. Southern, 'Master Vacarius and the Beginning of an English Academic Tradition', in *Medieval Learning and Literature: Essays Presented to R. W. Hunt*, ed. by J. J. G. Alexander and M. T. Gibson (Oxford: Clarendon Press, 1976), pp. 257–86 (appendix, pp. 283–84).

<sup>12</sup> 'Duo sola sunt que audacem me semper faciunt ad scribendum, uidilicet communis utilitas et ueritatis amor': *Summa de matrimonio*, §1, p. 270.

<sup>13</sup> 'Nunc quoque rem non minimam aggredior sed a pluribus quidem magistris attemptatam. A nullo uero reperi in aliquo expeditam, scilicet de coniunctione et dissolutione coniugii, que aliter a iure ciuile et longe aliter ab ecclesiastico iure disponuntur, quamuis eadem secundum utrumque ius sis matrimonii diffinitio': *Summa de matrimonio*, §2, p. 270.

reason of the confusing terms used by masters: initiate marriage (*matrimonium initiatum*), consummated marriage (*consummatum*), ratified marriage (*ratum*), and completed or 'perfected' marriage (*perfectum*).<sup>14</sup> The intended audience is clearly one which would be interested in the marriage question; such readers would have included Church officials, but also may well have included those *ius commune* lawyers and advocates of the ecclesiastical courts, who, although trained in its theory, did not 'use Roman law'.<sup>15</sup>

The first part of the *Summa de matrimonio* deals with the consummation theory, which holds that an initiate marriage is completed by the act of sexual intercourse between the parties. Vacarius focuses on the *initiatum matrimonium* and its relationship to the sexual act by which it became a completed marriage. He analyses this process as a contract of persons, before determining that the legally relevant moment at which a marriage could be said to be formed is the *traditio*. The concept of *traditio*, as we shall see below, was a Roman law concept of physical delivery, which Vacarius applies in a unique way to marriage.

In the second part, Vacarius turns to the consensual theory and analyses the principal authority for this view, St Ambrose. Again, he identifies the relevant legal moment of consent with the concept of *traditio*. He highlights, also, three issues which cause difficulties for the consensual theory and to which he returns at different moments in the treatise: concubinage, the unique marriage of Mary and Joseph, and the canon *Aliter* concerning the clandestine marriage of young girls.

The third part of the treatise returns to the consummationists' theory, this time exploring the notion of a *matrimonium perfectum*. After exemplifying the idea of *perfectum* by contrasting it with concubinage, he turns to the issue of whether the sacrament in marriage is constituted by the act of sexual intercourse.

The fourth part deals with the issue of dissolving marriage. After noting the eight traditional grounds for dissolving a marriage, Vacarius seeks to explain them with a unifying principle, namely the absence of legal consent. He notes

<sup>14</sup> '[Q]ue per magistrorum expositionem mihi magis turbata uidetur, [...] quod matrimonium aliud est initiatum tantum, aliud initiatum et consummatum et non ratum, aliud initiatum et consummatum et ratum siue perfectum': *Summa de matrimonio*, §2, p. 270.

<sup>15</sup> '[...] eis maxime qui legibus istis non utuntur': *Liber pauperum*, in *The Liber pauperum of Vacarius*, ed. by Francis De Zulueta (London: Selden Society, 1927), pp. 1–300 (p. 2). Hereafter, the text will be cited as '*Liber pauperum*' and the introduction/commentary as '*The Liber pauperum*, ed. by De Zulueta'. Note that Roman law had only an indirect influence on the practice of the secular courts: John L. Barton, 'Roman Law in England', *Ius Romanum medii aevi*, 5, 13a (1971), 1–97.

how *traditio* relates to this concept. The fifth part of the treatise continues the theme of dissolution, although in this case it deals with *ratum matrimonium*. In this discussion, there is an attempt to explain the sacrament in marriage and the related notion of indissolubility.

He ends the treatise by challenging his readers to prove or disprove a means for divorce, which he suggests may prove an exception to the commonly-accepted biblical injunction against re-marriage. The apparent absence of polemical exhortation here is surprising when compared to the *Tractatus de assumpto homine* and *Liber contra*, but when seen in the context of the work as a whole, it is plain that this plea is no more than a rhetorical attempt at humility.

### Debates on Marriage in the Twelfth Century

Certain people, Vacarius notes, believe that marriage is instituted for the purposes of propagating offspring, and that man and woman become ‘one flesh’ in the act of sexual intercourse (*carnis commixtione*).<sup>16</sup> Others, he adds, on the authority of St Ambrose, hold that marriage is formed from the moment that it is begun (*initio*), that is, in the marriage pact (*pactio coniugal*).<sup>17</sup> Here Vacarius describes the debate that existed from the mid-twelfth century between the two theories of marriage: the consummationist theory popularized by Gratian, Rufinus, and other decretists, and the consensualist theory famously held by theologians such as Peter Lombard.<sup>18</sup>

During the twelfth century canonists and theologians struggled to reach consensus on what constituted marriage.<sup>19</sup> The main issue of debate was the role

<sup>16</sup> ‘Cum ad humani generis propagationem institutum sit matrimonium, cumque uir et mulier in carnis commixtione una caro fieri credantur, ideo putauerunt quidam etiam summorum pontificum in ipsa carnis commixtione constare matrimonium’: *Summa de matrimonio*, §4, p. 271.

<sup>17</sup> ‘Vnde Ambrosius: Cum iniciatur coniugium, coniugii nomen asciscitur. [...] [U]nde subicit: Non defloratio uirginitatis facit matrimonium sed pactio coniugal, id est, qua uiro re ipsa coniungitur, non qua uiro promittitur’: *Summa de matrimonio*, §4, p. 271.

<sup>18</sup> The association of theologians to the consensual model, and canonists to the coital doctrine, is a generalization, and is, in some cases, misleading: Marcia L. Colish, *Peter Lombard*, 2 vols (Leiden: Brill, 1994), II, p. 631.

<sup>19</sup> Helpful surveys include James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), pp. 182–245; Dauvillier, *Le Mariage dans le droit classique*, pp. 5–32, 183–94, 279–92, 310–18, 473–79; Gérard Fransen, ‘La formation du



of consent. Parisian theologians, represented most prominently by Peter Lombard, believed marriage was formed by the consent of the partners. Peter Lombard, in particular, described a 'pure' consensual theory of marriage in his *Sententiae*. But the immediacy of the consent was crucial. This theory distinguished between mere sponsals (*sponsalia*), at which time the couple expressed *sponsalia verba de futuro*, or consent to marry at a future time, which did not constitute marriage, and *sponsalia verba de presenti*, or words of present intent here and now to be married, which constituted marriage per se.<sup>20</sup> This Lombardian view held sway amongst Paris-trained theologians and canonists in the mid-twelfth century.<sup>21</sup>

lien matrimonial au moyen âge', *Revue de droit canonique*, 21 (1971), 106–26; Seamus P. Heaney, *The Development of the Sacramentality of Marriage from Anselm of Laon to Thomas Aquinas* (Washington: Catholic University of America Press, 1963), pp. 7–14, 75–79, 82–83; T. P. McLaughlin, 'The Formation of the Marriage Bond according to the *Summa Parisiensis*', *Mediaeval Studies*, 15 (1953), 208–12; Jean Gaudemet, *Le mariage en Occident. Les mœurs et le droit* (Paris: Cerf, 1987). Briefer overviews include Michael M. Sheehan, 'Choice of Marriage Partner in the Middle Ages: Development and Mode of Application of a Theory of Marriage', *Studies in Medieval and Renaissance History*, n.s., 1 (1978), 1–33; Constance M. Rousseau, 'The Spousal Relationship: Marital Society and Sexuality in the Letters of Pope Innocent III', *Mediaeval Studies*, 56 (1994), 89–109 (pp. 91–92); John T. Noonan, 'Power to Choose', *Viator*, 4 (1973), 419–34.

<sup>20</sup> Furthermore, future consent followed by intercourse did constitute a marriage, according to the Lombard. Intercourse was legally significant only if there had been prior agreement about future marriage; but for a couple who had exchanged present consent to marry, consummation was legally irrelevant: Peter Lombard, *Sententiae*, 4, d. 27, cc. 2–5, d. 28 c. 3, in *Sententiae in IV libris distinctae*, ed. by Ignatius C. Brady, 3rd rev. edn, 2 vols in 3 (Grottaferrata: Collegium S. Bonaventurae, 1971–81), II, pp. 422–24, 434–35. Brundage also noted that Peter Lombard's notion of consent differed 'radically' from the consent theory of Roman law; Roman consent theory assumed that marital consent was ongoing and continuous, and could be revoked at any time by either party, but, for the Lombard, consent in the present tense was given once for all and could not be revoked: Brundage, *Law, Sex, and Christian Society*, p. 264, n. 36. See also Adhémar Esmein, *Le mariage en droit canonique*, 2nd edn, 2 vols (New York: Burt Franklin, 1968), I, pp. 119–24; Colish, *Peter Lombard*, II: pp. 651–54.

<sup>21</sup> As evidenced by the acceptance of the *Summa Parisiensis* of the Lombard's theory: *Summa Parisiensis*, in *The Summa Parisiensis on the Decretum Gratiani*, ed. by T. P. McLaughlin (Toronto: Pontifical Institute of Mediaeval Studies, 1952; repr. 1977), d. 34, c. 19; c. 30 q. 5 pr.; c. 32, q. 2 pr.; c. 32 q. 7 c. 18; pp. 33–34, 237, 241 and 248. Brundage noted, however, that it omitted discussion of d. 27–29: *Law, Sex, and Christian Society*, p. 265, n. 39. The consent theory was also in accordance with Abelard's notion of intentionality, Hugh of St Victor's paradigm of a pre-lapsarian Adam and Eve, with patristic writers Ambrose and

Against this view, several Bolognese canonists, such as Gratian, Rufinus, and other decretists, favoured a consummation model for marriage. For them, mere consent was not enough; there needed to be the additional component of sexual intercourse. Gratian saw marriage formation as arising in two phases of a single contract: the first phase was the *matrimonium initiatum*, or the state of having initially entered marriage after giving consent; the second stage, the *matrimonium ratum*, arose when the couple consummated the union through sexual intercourse, which formed and perfected the conjugal bond.<sup>22</sup> In this way, sexual intercourse was necessary, according to Gratian and his followers, in order to complete a union initiated by consent.<sup>23</sup> Gratian merged the concepts of *sponsalia* and *matrimonium initiatum* when contrasting them with *matrimonium ratum*, as complementary elements in a two-stage process of conjugal union.<sup>24</sup>

Behind each of these conflicting views in the mid-twelfth century was a diametrically opposed interpretation of the role of sex in marriage by the Church

Augustine: Irven Resnick, 'Marriage in Medieval Culture: Consent Theory and the Case of Joseph and Mary', *Church History*, 69 (2000), 350–71.

<sup>22</sup> Gratian, *Decretum*, C. 27, q. 2, cc. 33–39, cols 1073–74. Bearing in mind Winroth's thesis, it will not be necessary to specifically indicate whether a canon is taken from the first ('Gratian I') or second recension ('Gratian II'), as all the canons relevant to marriage discussed here come from the first recension; see the table in Winroth, *The Making*, p. 222.

<sup>23</sup> Paucapalea subscribed to Gratian's theory without substantial change: Paucapalea, *Summa*, in *Die Summa des Paucapalea über das Decretum Gratiani*, ed. by Johann Friedrich von Schulte (Giessen: Roth, 1890; repr. Aalen: Scientia, 1965), pp. 112–14 c. 27, q. 1 pr., and C. 27, q. 2). Roland of Bologna saw both consent and consummation as essential elements of marriage; a marriage might be initiated by consent, but such a union was not permanently binding until it was consummated: Roland of Bologna, *Summa*, C. 27 pr., and q. 2, c. 5, in *Die Summa Magistri Rolandi*, ed. by Friedrich Thaner (Aalen: Scientia, 1962), pp. 16–17, 33–34, 50, 114, 127, 129, 131–33; Roland of Bologna, *Sententiae*, in *Die Sentenzen Rolands*, ed. by Ambrosius M. Gietl (Freiburg im Breisgau: Herder, 1891; repr. Amsterdam: Rodopi, 1969), p. 270. Rufinus took a similar approach to Gratian in his *Summa*, in *Die Summa decretorum des Magister Rufinus*, ed. by Heinrich Singer (Paderborn: Schöningh, 1902; repr. Aalen: Scientia, 1963), C. 27 pr., and C. 27, q. 2, pp. 430–32. Note that Johann von Schulte's edition 'should never be used', since it incorrectly ascribes later works to that author: Robert L. Benson, *The Bishop Elect. A Study in Medieval Ecclesiastical Office* (Princeton: Princeton University Press, 1967), p. 56.

<sup>24</sup> Sheehan, 'Choice of Marriage Partner', p. 8; Brundage, *Law, Sex, and Christian Society*, p. 236; Jean Gaudemet, 'Les étapes de la conclusion du lien matrimonial chez Gratien', in his *Sociétés et mariage* (Strasbourg: Cerdic, 1980), pp. 379–91 (pp. 385–87).

Fathers, particularly espoused by St Augustine.<sup>25</sup> Gratian grounded his own theory on Augustine's three appropriate goals of marriage: that it made possible and encouraged marital fidelity; that it provided a suitable moral and religious setting for the raising of children; and that it promoted mutual love and support between the partners in a marriage.<sup>26</sup> For Gratian, what distinguished marriage from other non-marital sexual relations, such as adultery and fornication, were these three moral 'goods'.<sup>27</sup> Further, the proper function of marital sex for Gratian, who acknowledged Augustine's distinction between pre-Lapsarian and post-Lapsarian sex, was for procreation. Persons who married for sexual enjoyment were fornicators, a label Gratian took from St Augustine and St Jerome.<sup>28</sup>

To this 'Italian solution' was opposed the 'French solution', which placed greater emphasis on the spiritual, as opposed to the carnal, dimensions of marriage. Taking Augustine's reservations about marital sex and Jerome's outright hostility towards it,<sup>29</sup> and citing the spiritual model for Christian marriage of Christ's union with the Church (Ephesians 5. 31–32), medieval theologians such as Peter Abelard (d. 1142) posited the chaste marriage of Joseph and Mary as a positive model, established by consent alone, and apart from sexual relations.<sup>30</sup> Furthermore, Augustine had added that the bond of matrimony remained permanent, even when the couple had agreed to abstain forever from carnal relations. St Ambrose too advanced the idea that marriage constituted the mutual agreement of the couple, not their sexual relations.<sup>31</sup> It is into this confusion of canon law and patristic authorities that Vacarius introduces his own views on marriage, notably the *traditio*.

<sup>25</sup> Brundage, *Law, Sex, and Christian Society*, pp. 235–42.

<sup>26</sup> Augustine, *De nuptiis et concupiscentia*, 1. 17, 19, 19, in CSEL: 42, p. 231.

<sup>27</sup> Gratian, *Decretum*, C. 32, q. 1, d.p.c. 10 and c. 11, col. 1118.

<sup>28</sup> Gratian, *Decretum*, C. 32, q. 2, d.p.c. 2, col. 1120; cf. Augustine, *De peccatorum meritis* 1. 29. 57, in PL: 44, col. 142; *De sancta virginitate* 20. 19, in CSEL: 41, p. 253.

<sup>29</sup> Jerome, *Adversus Jovinianum*, 1. 49, in PL: 23, col. 281. Note, however, that Jerome viewed the marriage between Mary and Joseph as that of spousals only and not a true marriage, since there was no sexual intercourse between Joseph and the perpetual virgin Mary: *De perpetua virginitate B. Mariae, Adversus Helvidium*, 19, in PL: 23, col. 203B; Resnick, 'Marriage in Medieval Culture', pp. 354–55.

<sup>30</sup> Peter Abelard, *Sermo* 1: 'In annuntiatione Beatae Virginis Mariae', in PL: 178, col. 381D.

<sup>31</sup> Resnick, 'Marriage in Medieval Culture', p. 355, n. 17.

### The *Liber pauperum*

The *Liber pauperum*, as discussed in Chapter One, is a teaching text, with elements of both canon and Roman law. Given its likely composition after the 1170s, it may well have been later than the *Summa de matrimonio*, which was probably composed sometime in the half-decade before. Its treatment of marriage is uncontroversial, in stark contrast to the *Summa de matrimonio*. The fifth book of the *Liber pauperum* deals with marriage.<sup>32</sup> Consistent with a design set out in his prologue to the *Liber pauperum*, Book Five accords in its ordering with Book Five of the *Code*, although in a much-abbreviated form. Its constituent thirty-seven titles also roughly follow the order of Book Five of the *Code*, with some thirty-nine titles of the *Code* omitted altogether.<sup>33</sup> As De Zulueta noted, Book Five is short and lightly glossed; therefore, for any ‘special doctrine about marriage’ one need look to the *Summa de matrimonio*.<sup>34</sup> Vacarius does not follow the strict order of Justinian’s corpus in his arrangement of the titles therein, since he includes passages from the *Code*, the *Digest*, and the *Novels*, arranging the passages thematically.<sup>35</sup> Indeed, his treatment of marriage simply consolidates, in thematic order, these citations and restricts his interpretative input to a minimum.<sup>36</sup>

In a gloss to the first title of this fifth book, he describes marriage as a ‘contract of persons’:

We hear above of the contracts of things, now we will discuss the contracts of persons, in which people are joined, husband and wife are united; and because this is done through marriage, we will speak of marriage.<sup>37</sup>

Such a view is consistent with the *Digest* and the interpretation of Justinianic Roman lawyers, such as Rogerius and Placentinus. Later in the same gloss

<sup>32</sup> *Liber pauperum*, 5, pp. 175–87.

<sup>33</sup> *The Liber pauperum*, ed. by De Zulueta, p. xlvii. I noted the following titles of the *Code* as absent from the *Liber pauperum*: 2, 6, 7, 8, 19, 20, 22, 24, 28, 31, 32, 33, 36, 38, 40, 41, 42, 43, 44, 45, 46, 47, 50, 52, 53, 55, 56, 57, 58, 60, 61, 62, 64, 65, 66, 67, 68, 69, and 70.

<sup>34</sup> *The Liber pauperum*, ed. by De Zulueta, p. cxvii.

<sup>35</sup> *Ibid.*, pp. cxvii–cxxi.

<sup>36</sup> Massimiliano Guareschi, ‘Fra canones e leges: Magister Vacarius e il matrimonio’, *Mélanges de l’École française de Rome. Moyen Âge*, 3 (1999), 105–39 (p. 122).

<sup>37</sup> ‘Audivimus supra de contractibus rerum, nunc disseramus de contractibus personarum, quibus persone coniunguntur, s. mas et femina sociatur; et quia hoc fit per nupcias, de nupciis dicamus’: *Liber pauperum*, 5.1, p. 175.

Vacarius queries whether a betrothal is the same as marriage, noting that *sponsalia* or marriage is understood in Gratian's *Decretum* as an initiate marriage followed by a consummated marriage.<sup>38</sup>

Vacarius therefore accepts the canonists' view in his *Liber pauperum* and reconciles it as analogous to the Roman law concept of consent. In contrast, the *Summa de matrimonio* is the vehicle by which he criticizes such a view. Although De Zulueta has implied that Vacarius had not yet radicalized his ideas on marriage formation as he was to do 'later' in the marriage treatise, my suggested dating of the two works rebuts this idea of progression. The earlier *Summa de matrimonio* focused on certain elements likely to cause uncertainty in marriage litigation, while the *Liber pauperum* is meant for quiet study in the classroom and for gaining an 'overall smattering' of the principles of Roman law, including its marriage law. In short, the two works are intended for similar audiences but with slightly different purposes.

### The Anstey Litigation

The various legal proceedings known collectively as the Anstey litigation have been linked with Vacarius and his marriage treatise. This suggestion arises from the timing and location of the final chapter in those proceedings, which were held before the ecclesiastical courts of the archbishop of Canterbury and York, and before papal judge delegates, in the late 1150s and early 1160s; this was, of course, a period in which Vacarius was involved in these spheres. Further, the issues in dispute included whether the consummationist or consensual theory of marriage applied, and whether an instance of the wife being 'led' into her putative husband's home in fact constituted an example of Vacarius's notion of *traditio*. It is therefore helpful, at this point, to outline the facts of the case and the course of the ensuing legal proceedings.<sup>39</sup>

<sup>38</sup> 'Hic solet queri utrum idem esset contractus in sponsalibus et in matrimonio, sive coniugio. quod videtur secundum decreta, quia dict grac. quod sponsalia sint initiatum matrimonium, nupcie consummatum': *Liber pauperum*, 5.1, p. 175.

<sup>39</sup> The principal source for the Anstey litigation is the detailed memorandum drawn up by Richard of Anstey: London, Public Records Office, E 101/505/1, cited in Paul Brand, 'New Light on the Anstey Case', *Essex Archaeology and History*, 15 (1983), 68–83 (p. 68, n. 1). Richard's memorandum has been published in *The Rise and Progress of the English Commonwealth: Anglo-Saxon Period, Containing the Anglo-Saxon Policy, and the Constitutions Arising out of Laws and Usages which Prevailed before the Conquest*, ed. by Francis Palgrave, 2 vols (London: John

William de Sackville made a promise of marriage to Albreda de Tregoze; but, before doing so, he left her. He then subsequently met Adelicia de Vere, and they sexually consummated their relationship. Albreda issued proceedings in the ordinary ecclesiastical court seeking to annul his subsequent union and restore her own marriage to William, but she was unsuccessful. In 1139, on appeal to Henry of Winchester, then papal legate for Pope Innocent II, she succeeded in her claim and the judgment was executed before the diocesan synod of London, probably in about 1139, annulling the marriage between William and Adelicia.

The issue of the disputed marriage arose again in 1158, this time in the secular King's court, when Richard of Anstey claimed that Mabel de Francheville, William's only daughter (by Adelicia), was illegitimate and therefore not entitled to succeed to William's estate. Richard disputed Mabel's legitimacy and her right to the lands on the basis that his uncle, William, had annulled the marriage to Adelicia, and that his mother's sister, Albreda, was William's true wife. What was essentially a property dispute now depended on revisiting the issue of William's marriage. Significantly, the sources for the litigation date from this period, 1158 to 1163.

This marriage issue, as appropriate, came before the ecclesiastical court of Archbishop Theobald of Canterbury, where it had eighteen hearings during the course of 1159.<sup>40</sup> At this time Vacarius was no longer employed in the archbishop's household, having moved to York about a decade earlier. Mabel was

Murray, 1832), II, pp. v–ix (commentary), pp. ix–xxvii (translation), pp. lxxv–lxxvii (text) [extracted in Melville Madison Bigelow, *Placita Anglo-Normannica: Law Cases from William I to Richard I Preserved in Historical Records* (London: S. Low, Marston, Searle & Rivington, 1879), Appendix F, pp. 311–14 (text)]; and re-edited by Patricia M. Barnes, 'The Anstey Case', in *A Medieval Miscellany for Doris Mary Stenton*, ed. by Patricia M. Barnes and C. F. Slade (London: Ruddock, 1962), pp. 1–16 (commentary), pp. 17–24 (text and translation). In addition, extracts from it have been translated in *English Historical Documents: Volume 2, 1042–1189*, ed. by D. C. Douglas and George W. Greenaway, 2nd edn (London: Eyre & Spottiswoode, 1953), nos 55, 456–57. The memorandum of Richard (and other relevant documents) has been re-edited, collated, and translated by Raoul C. Van Caenegem, *English Lawsuits from William I to Richard I*, 2 vols (London: Selden Society, 1990–91), II, no. 408E, pp. 397–404. For the foregoing account of the case, I have relied on the summary of Patricia Barnes.

<sup>40</sup> Letter from Henry of Blois, Bishop of Winchester, to Theobald, Archbishop of Canterbury (1159 or 1160), in *Heinrich von Blois, Bischof von Winchester (1129–71)*, ed. by Lena Voss (Berlin: Ebering, 1932), pp. 166–67; see also Van Caenegem, *English Lawsuits*, no. 408, pp. 387–88. Henry testifies that twenty years ago he received from Pope Innocent II a decretal, which he quotes extensively, concerning the disputed marriage.

successful at Canterbury, and so Richard appealed to Pope Alexander III in 1160.<sup>41</sup> The matter was referred to a papal judges delegate<sup>42</sup> (at a time before Vacarius held such appointment), who examined the case, following which the papal *curia* found in favour of Richard.<sup>43</sup> In 1163, following this successful appeal to the pope by Richard, a secular court granted him his ensuing right to succession over the disputed lands. This completed Richard's victory over Mabel, and ended the litigation.

Despite the lack of any specific reference to Vacarius in any of the sources for the Anstey litigation, circumstantial evidence almost certainly places him there. As Maitland has noted, Richard employed Master Ambrose as his advocate, who later witnessed a contract in 1181 with Vacarius; Maitland's implication was that Vacarius may have been opposing counsel for Mabel.<sup>44</sup> Donahue has suggested, in a similar vein, that Vacarius may have provided the brief for Mabel; the fact that he assisted Mabel would perhaps explain why Vacarius was not mentioned in the account of Richard. Further, Mabel is reported to have consulted with canonists at Oxford regarding her appeal in 1160, and this may have occasioned her meeting with Vacarius.<sup>45</sup> As Southern has suggested, Oxford was a centre of legal studies, attracting advocates such as Vacarius and his ilk.<sup>46</sup>

<sup>41</sup> John of Salisbury, a member of Theobald's chancery, set forth the statements of the parties and prepared the appeal lodged by Richard, in a letter to Pope Alexander III (1160), in *The Letters of John of Salisbury. Volume 1: The Early Letters (1153–1161)*, ed. by W. J. Millor, H. E. Butler, and C. N. L. Brooke, 2nd edn (Oxford: Clarendon Press, 1986), no. 131, pp. 227–37; see also Van Caenegem, *English Lawsuits*, no. 408B, pp. 388–95.

<sup>42</sup> A letter from Pope Alexander III appointed Hilary, bishop of Chichester, and Laurence, abbot of Westminster, as judges delegate in the case of Richard Anstey (1161), in Barnes, 'Anstey Case', no. 2, p. 24; see also Van Caenegem, *English Lawsuits*, no. 408C, pp. 395–96.

<sup>43</sup> Letter from Alexander to Richard of Anstey (1162), in Walther Holtzmann, *Papsturkunden in England*, Abhandlungen der Gesellschaft der Wissenschaften zu Göttingen, Phil.-Hist. Klasse, Neue Folge, xxv, 1–2, 3 vols (Berlin: Weidmann, 1930–52); see also Van Caenegem, *English Lawsuits*, no. 408D, pp. 396–97.

<sup>44</sup> 'Magistri Vacarii', ed. by Maitland, p. 141; cf. F. Liebermann, 'Magister Vacarius', *English Historical Review*, 11 (1896), 305–14 (pp. 313–14). Maitland also supposed that, in 1159 Vacarius still remained in Theobald's household; but he had since moved to York.

<sup>45</sup> Charles Donahue, 'The Case of the Man Who Fell into the Tiber: The Roman Law of Marriage at the Time of the Glossators', *American Journal of Legal History*, 22 (1972), 1–53 (p. 23).

<sup>46</sup> Richard W. Southern, 'From Schools to University', in *The History of the University of Oxford, Volume 1: The Early Oxford Schools*, ed. by Jeremy I. Catto (Oxford: Clarendon Press, 1984), pp. 1–36.

The two issues at play in the litigation, namely which of William's two 'marriages' — by consent or by sexual consummation — was to be adjudged valid, and the issue of whether Mabel had been 'handed over' to him, suggest links to Vacarius's *Summa de matrimonio*. These issues are set out in Innocent II's papal rescript, quoted by Henry:

On the question which you have put concerning the sacrament of marriage I reply briefly as follows. I declare that woman to be [the lawful wife] who, as you say, was handed over to be a wife by her father and was committed to him to whom she has been handed over into the care of the father [of the future husband] until the latter would lead her into his house on the appointed day, because on the basis of legitimate consent she became a wife as soon as she agreed to be married by a spontaneous pact. [...] Therefore whatever happened with the other woman afterwards in intercourse or in the procreation of offspring, is all the more reprehensible as what had gone before is more genuine [...].<sup>47</sup>

Although the papal rescript uses both *tradere* ('to hand over') and *transducere* ('to lead across'), the reference to *transducere* can be identified with the Roman law concept of *deductio in domum mariti*, the solemn and physical introduction of the bride into the groom's house, indicative of marriage and often accompanied by religious ceremonies.

On this basis, Brundage has suggested that Vacarius's notion of *traditio* was 'at the heart of Bishop Henry of Winchester's opinion'.<sup>48</sup> Indeed, it appears that Mabel had not simply argued that the marriage between William and Albreda had not been consummated, and therefore was not complete. She alleged, additionally, that William had not taken (*transducere*) Albreda into his household; she instead remained in the care of her father, and therefore no marriage existed between them.

<sup>47</sup> 'Super [eo] quod interrogasti de sacramento conjugii breviter respondeo. Illam quam dixisti a patre conjugem traditam, et ab eodem, cui tradita fuerat patri commedatam, donec statuta die in suam domum transduceret, dico, quia legitimo consensu interveniente ex eo statim conjux fuit, quo spontanea pactione ses conjugem esse consensit. [...] Quapropter quicquid postea cum alia factum est, sive in coitu, sive in generatione proles, tanto reprehensibilis est secundum, quanto verius primum': Letter from Henry of Blois to Theobald of Canterbury, in Van Caenegem, *English Lawsuits*, no. 408, pp. 387–88. The accounts of John of Salisbury (Van Caenegem, *English Lawsuits*, no. 408B, pp. 388–95 [p. 389]) and Alexander III (Van Caenegem, *English Lawsuits*, no. 408D, pp. 396–97 [p. 396]) note that William failed to lead Albreda into his own house on the appointed wedding day.

<sup>48</sup> See 'Magistri Vacarii', ed. by Maitland, pp. 141–42; Brundage, *Law, Sex, and Christian Society*, p. 267.



But, as I argue later in this chapter, the principle of *deductio* is not identical to the notion of *traditio* which Vacarius employs in the *Summa de matrimonio*. Instead of the Roman law concept, I argue that Vacarius envisages the *traditio* as a hypothetical legal moment which indicates the marriage partners' consent to joining each other in marriage, and, thereby, completing the legal requirements for their marriage.

The identification of *deductio* and *trado* in these sources instead points to a commonly-held view by Roman civilian lawyers trying to accommodate their laws to those of the canonists, namely that *deductio* or the act of the *transducere* represented the joining of the marriage partners in sexual intercourse. That is, they identified the sacrament of sexual intercourse in this *deductio* formality. This, as I will show, is completely at odds with Vacarius's understanding of *traditio*.

Debates on what constituted marriage took place, therefore, both on an abstract level — involving canonists, civilians, and theologians — and on a more practical level — involving real people, such as in the famous Anstey case. Against this background, Vacarius composed the *Summa de matrimonio* between about 1166 and 1170. While his legal textbook, possibly composed at a later date, makes no attempt at controversy, his *Summa de matrimonio* outlines its opposition to the prevailing debates between consensualists and consummationists. In this work Vacarius looks beyond restrictive categories of theology, canon law, and Roman civil law, to the notion of the *traditio* as well as including a logical analysis of terms. His interpretation of marriage challenges twelfth-century understandings of that institution.

## *Part II: Terms and Language in the Summa de matrimonio*

### **Scholarship on the *Summa de matrimonio***

Scholarship has often focused on Vacarius's solution to the marriage problems outlined in the previous part of this chapter. The direct impact of the *Summa de matrimonio* on Vacarius's twelfth-century contemporaries is arguably limited, however, since it left no trace in the works of famous decretists or decretalists of the twelfth century. Despite this seeming lack of influence, scholars have been intrigued nonetheless by Vacarius's notion that marriage was formed at the legally significant moment of the *traditio*, the Roman law term used to denote transfer of ownership by delivery.

Scholars have rightly concentrated on the term *traditio* as a means through which Vacarius's views on marriage formation can be understood. As I demonstrate in the second part of this chapter, however, there is still no clear understanding of Vacarius's unique use of the term. Further, such focus on the *traditio* has been at the expense of understanding how Vacarius unveiled this concept as part of an overall critique of the uncertainties in marriage-formation norms in mid- to later-twelfth-century Anglo-Norman society. Some have seen his use of this term as a 'third way' in the marriage debates. That is, in answering the question of how marriage was formed (contrary to those who argued that consent alone sufficed, and those who argued that consent followed by sexual intercourse was required), Vacarius offered a third alternative, namely that marriage was formed by *traditio*.<sup>49</sup> Maitland recognized in the treatise a *sui generis* approach to marriage, but, in light of its absence from canon law collections, he deemed it ultimately futile, likening it to a 'lone voice crying in the desert'.<sup>50</sup>

Vacarius's use of the *traditio* to define the definitive moment of marriage formation has also been seen as the solution of a civilist fed up with the discordant mess of canon law and therefore resorting to another law system, that of Roman law.<sup>51</sup> Consistent with this view Donahue equated this concept of *traditio* to the Roman law notion of *deductio*.<sup>52</sup> In a broader sense, Kuttner and Rathbone considered Vacarius and his use of *traditio* as exemplifying the 'relativistic and flexible methodology' of Anglo-Norman canonists, which distinguished them from the 'rigid dialectic' of Gratian.<sup>53</sup> This distinctive pragmatism, however, was not sufficient to establish for Vacarius his own 'school of canon law learning' in England.<sup>54</sup>

In this part I shall argue that proper consideration of Vacarius' marriage treatise requires looking beyond his use of the concept of *traditio*. Indeed, it is one of two significant aspects of his treatise, the other being his consideration of

<sup>49</sup> Brundage, *Law, Sex, and Christian Society*, pp. 96–97, and p. 279.

<sup>50</sup> 'Vox clamantis in deserto': 'Magistri Vacarii', ed. by Maitland, p. 141.

<sup>51</sup> For example, Joseph De Ghellinck, 'Magister Vacarius: Un juriste-théologien peu aimable pour les canonistes', *Revue d'histoire ecclésiastique*, 44 (1949), 173–78 (p. 177).

<sup>52</sup> Donahue, 'The Case of the Man', p. 11.

<sup>53</sup> Stephan Kuttner and Eleanor Rathbone, 'Anglo-Norman Canonists of the Twelfth Century', *Traditio*, 7 (1949–51), 279–358 (p. 287); repr. as 'Retractiones VIII', in *Gratian and the Schools of Law 1140–1234*, ed. by Stephan Kuttner (London: Variorum, 1983), pp. 23–38.

<sup>54</sup> Kuttner and Rathbone, 'Anglo-Norman Canonists', p. 287.

the misleading use of language and terms by canonists and commentators on theories of marriage formation. It is by consideration of both these aspects that Vacarius can be seen as formulating an alternative vision of marriage formation.

Most significantly, his critique of the consummation theory of marriage formation centres on the (mis)use of the terms *matrimonium* and its cognates, such as *matrimonium initiatum* or *matrimonium futurum*, *matrimonium consummatum* or *matrimonium ratum*, and *matrimonium perfectum*. These terms dominate *causae* twenty-seven to thirty-six of Gratian's 'marriage treatise' (and Rufinus's *Summa* on the *Decretum*). Such language, Vacarius suggested, could lead to a misunderstanding of the exact moment in time when pre-marriage status became marriage proper.

### *Matrimonium initiatum*

For Gratian, the *matrimonium initiatum* was the state of having initially entered marriage after giving consent, while the *matrimonium ratum* arose when the couple consummated or ratified the union through sexual intercourse.<sup>55</sup> Gratian referred to ratified marriages in these terms:

But it must be known that marriage is initiated by *desponsatio* and perfected by intercourse. Whence between bride and groom there is a marriage, but an initiate marriage; between those who have had intercourse there is a ratified marriage (*coniugium ratum*).<sup>56</sup>

Gratian here locates *ratum* marriages in the sexual act. Gratian recognized Pope Leo's authority that this *matrimonium ratum* was identical with the *matrimonium perfectum* at the moment of the 'sacrament of Christ and the church'.<sup>57</sup> It is this distinction (or lack of distinction) between *ratum* and *perfectum* which occupies Vacarius in his attack on the consummation theory as well as the term *matrimonium initiatum*.

Vacarius challenges the consummation theory and its notion of a *matrimonium initiatum* or 'initiate marriage'. He notes that certain masters

<sup>55</sup> Gratian, *Decretum*, C. 27, q. 2, cc.33–39, cols 1073–74.

<sup>56</sup> 'Sed sciendum est, quod coniugium desponsatione initiatum, conmixtione perficitur. Unde inter sponsum et sponsam coniugium est, sed initiatum; inter copulatos est coniugium ratum': Gratian, *Decretum*, C. 27, q. 2, dpc. 34, col. 1073.

<sup>57</sup> Gratian, *Decretum*, C. 27, q. 2, dpc. 39, col. 1074.

identify *matrimonium initiatum* with *sponsalia*.<sup>58</sup> He no doubt refers here to Rufinus.<sup>59</sup> While Vacarius does not distinguish Gratian's *desponsatio* from the *sponsalia*, these two terms are commonly translated as 'betrothal' or 'engagement', which both connote futurity. The Latin terms, however, can mean either present or future troth plighting, depending on the context. For this reason, I leave the terms untranslated where possible or use the chronologically neutral 'spousals'.

For Vacarius, the notion of anything, let alone a marriage, being described as 'initiate' or 'begun' (*initiatum*), is beset with two conceptual difficulties. For something to be 'initiate', Vacarius argues, it has to be given form and supported by its properties, so that it is sufficient to carry out that in respect of which it is initiated.<sup>60</sup> Vacarius's use of such Neoplatonic logical language, reminiscent of Plato's *On Interpretation*, indicates the *logica vetus* had reached him, probably via Boethius's commentaries.<sup>61</sup> For Vacarius, something is complete or perfect when it is created or initiated; for example, someone who becomes a Christian is an 'initiate' when baptised, but is also a 'perfect' or complete Christian if initiated perfectly.<sup>62</sup> Further, when God created the world, he did so perfectly. In the same way, the perfect initiation to the office of priesthood makes that office complete or perfect (*perfectum*).<sup>63</sup> Vacarius here refers to legitimate ordination and institution, and the position that initiation has to be legitimate (or perfect) for the status of the initiated to be perfect.<sup>64</sup>

<sup>58</sup> '[Q]ue per magistrorum expositionem [...] [E]t, ut cetera interim omitam, iniciatum uolunt esse matrimonium in sponsalibus': *Summa de matrimonio*, §2, p. 270.

<sup>59</sup> Rufinus, *Summa*, C. 27, q. 2, in *Die Summa*, ed. by Singer, p. 440.

<sup>60</sup> 'Mihi autem uidetur id solum debere dici initiatum quod ita suis proprietibus formatum est atque subnixum ut iam sufficiat ad id exequendum cuius respectu dicitur iniciatum': *Summa de matrimonio*, §3, p. 270.

<sup>61</sup> Gillian R. Evans, *Old Arts and New Theology: The Beginnings of Theology as an Academic Discipline* (Oxford: Clarendon Press, 1980), p. 32.

<sup>62</sup> '[I]ta enim dicimus sacerdotem, uel mysticum poculum, uel christianum iniciatum qui etiam fictus ad baptismum accessit. [...] [R]es igitur ficti christiani quantum ad initium perfecta est, si tantum perfecte sit iniciatus': *Summa de matrimonio*, §3, p. 270.

<sup>63</sup> '[N]am sicut ex perfecto sacerdotio est perfectum eius officium, sic ex perfecto coniugii iure perficitur eius officium et executio': *Summa de matrimonio*, §3, p. 271.

<sup>64</sup> '[Q]uemadmodum sacerdos legitime ordinatus et institutus in aliqua ecclesia minister, ex quo in eius possessione inductus est, integram et perfectam habet sui officii potestatem, ante etiam quam eam exerceat': *Summa de matrimonio*, §30, p. 283.

Describing the *sponsalia* as an ‘initate’ marriage, therefore, was to attribute to it the status of marriage when it had not yet attained that status.<sup>65</sup> He uses another analogy taken from Roman law: a *stipulatio*, or self-executing contract, Vacarius states, is complete insofar as its obligation, when it is formed and before the payment (*numeratio*) is made.<sup>66</sup> In addition, he adds, the injury (*iniuria*) of an unjust law (*ius iniquum*) is perfected and consummated when it is passed as law, even if it is used by no-one.<sup>67</sup> In the same way, marriage is completed in its obligation when it is formed, not when it is merely begun.

### *Matrimonium futurum*

The decretists’ depiction of *sponsalia* or spousals as a ‘future marriage’ (*matrimonium futurum*) was also in error, according to Vacarius. As he previously argued, a future marriage could not be a true marriage. This, he continues, is because the notion of a future marriage is only according to the future act of sexual intercourse, rather than the union of souls and mutual obligation already contracted in the *sponsalia*.<sup>68</sup> Vacarius illustrates how misleading the phrase ‘future marriage’ is: in Roman law, he states, a partnership and a donation are both known as ‘future’ contracts in terms of obligations already agreed upon, and also for what is yet to be completed and delivered.<sup>69</sup> But a marriage could not be *initiatum* unless it is ‘perfect at law’. Consequently, completion could be nothing but the full unfolding of qualities already entirely present in the

<sup>65</sup> ‘[E]rgo in sponsalibus iniciatum matrimonium non est, aut matrimonium iniciatum non est matrimonium’: *Summa de matrimonio*, §7, p. 273.

<sup>66</sup> ‘Ad hoc responderi potest quod in executione aliquando res perfici dicitur que tamen quantum ad obligationem ante perfecta est. [...] [S]tipulatio tamen ante numerationem quantum ad obligationem est perfecta’: *Summa de matrimonio*, §31, p. 283.

<sup>67</sup> ‘[S]icut iniuria iniqui iuris dicitur perfecta et consummata quando quis impetrauit ius iniquum, et si eo nunquam utatur’: *Summa de matrimonio*, §30, p. 283.

<sup>68</sup> ‘Secundum quos propter solam carnis commixtionem matrimonium futurum dicitur, et non propter ipsam animorum coniunctionem et obligationem que in sponsalibus iam contracta est quemadmodum in aliis contractibus ut in rerum societate et donatione et similibus contingit’: *Summa de matrimonio*, §8, p. 273.

<sup>69</sup> ‘Semel enim tantum contrahitur, scilicet in conuentione sponsali, et postea in carnis commixtione ipsa eadem coniunctio confirmatur et perficitur, sicut in rerum societate contingit’: *Summa de matrimonio*, §6, pp. 271–72.

beginning. Thus, the terms ‘initiate’ or ‘future’ marriage are, in the eyes of Vacarius, misleading.

Vacarius also notes that the confusion of ‘future marriage’ or ‘initiate marriage’, with spousals (*sponsalia*) occurs in canon law, but not Justinianic Roman law.<sup>70</sup> In Roman law, *sponsalia* differs from *nuptiae* (nuptials) in such factors as the requirements of a minimum age, domicile, and presence of the parties.<sup>71</sup> Whereas, in the spousals there was the *arras*, in nuptials the *dos* was given; so too was the woman, called *sponsa* in spousals, but *uxor* in nuptials. Lastly, *donationes* were permitted in the spousal, but not in nuptials.<sup>72</sup>

Vacarius notes that this distinction is not drawn in canon law. He compares the clear distinction in Roman law, between nuptials and *sponsalia*, to the obfuscation of the two terms so typical of canonists. Vacarius observes that, for the canonists, marriage is only one contract, which is begun in the consent when a couple agree to marry, and which is perfected in the act of sexual intercourse.<sup>73</sup> His language calls to mind Rufinus’s notion of two sacraments in marriage: the first in the *desponsatio*, in which the sacrament is in the soul joined to God through the consent and the habit of love; and the other in the mixture of flesh in which the sacrament of Christ and the Church resides when the man and the woman become one flesh.<sup>74</sup> Vacarius’s emphasis on the spiritual and therefore

<sup>70</sup> ‘Secundum leges seculi ita distinguuntur nuptie a sponsalibus’: *Summa de matrimonio*, §6, p. 271.

<sup>71</sup> ‘Alius itaque contractus est sponsaliorum, alius nuptiarum, et omnino utriusque diuersa proprietas. [N]am sicut arrarum datio in sponsalibus fit et non in nuptiis, ita dotis datio et natura in nuptiis perficitur et non in sponsalibus. [I]tem in sponsalibus non uxor dicitur sed sponsa, in nuptiis non sponsa sed uxor uocatur. [I]tem in sponsalibus non etas attenditur, non domicilium, non presencia, sed solus sufficit consensus. [I]n coniugio uero tam etas quam presentia uel domicilium desideratur’: *Summa de matrimonio*, §5, p. 271.

<sup>72</sup> ‘[I]nter uirum enim et uxorem, et non inter sponsum et sponsam, donationes sunt prohibite’: *Summa de matrimonio*, §5, p. 271.

<sup>73</sup> ‘[E]cclesiastico iure, secundum quod coniugium est animorum quedam spiritualis coniunctio que in sponsalibus quidem iniciatur, in carnali uero permixtione perficitur et consummatur’: *Summa de matrimonio*, §6, p. 271.

<sup>74</sup> ‘Sicut enim in coniugio duo sunt, desponsatio scil. et carnis commixtio, ita et ibi duo sacramenta consurgunt: unum in desponsatione, alterum in carnis commixtione. In desponsatione representatur sacramentum anime ad Deum, ut, sicut tunc sponsa sponso adiungitur per consensum, ita intelligatur anima Deo coniungi per dilectionis habitum [...] In carnis uero commixtione latet sacramentum Christi et ecclesie, ut, quemadmodum vir cum uxore una caro efficitur, ita Christus cum ecclesia una caro et una persona factus esse credatur in utero virginali’: Rufinus, *Summa*, C. 27, q. 2, in *Die Summa*, ed. by Singer, pp. 441–42. See

sacramental element in the spousals confirms his reference to Rufinus. It is noteworthy that Vacarius does indeed outline Rufinus's twofold sacrament, rather than Gratian's single sacrament consummation theory, identifying Rufinus as the particular, and Gratian as the general, target of his treatise.

### One-contract Analysis

As I have already discussed, behind Vacarius's rejection of the terms 'future' or 'initiate' marriage is his dismissal of Rufinus's and Gratian's positions that there is just one contract in marriage. Although he acknowledges that there is but one contract in a *societas* or a gift (*donatio*), the same is not true of marriage. A *societas* is only one contract, he notes, namely, the obligation to form a partnership, which is perfected when the property of the partners is brought together. Similarly, a donation seems to be only one contract, namely, an obligation to donate, which is perfected in the delivery of the gift.<sup>75</sup>

But such an apparent similarity is misleading. As far as Vacarius is concerned, in the case of a partnership, although the whole obligation is perfected in the agreement to share profit and loss, it is annulled (*tollo*) and frustrated (*perimo*) in the actual accomplishment (*executio*) of the profit and loss; likewise, although a donation is entirely contracted in the agreement (*pactio*), it is utterly dissolved on delivery of the gift.<sup>76</sup> Thus, for Vacarius, there is no initiation and perfection, but rather two separate legal acts: obligation, then dissolution.

From this analysis, Vacarius concludes that the partnership of persons (*societas personarum*) is similar, that is, in the undertaking of marriage (*matrimonium negotium*) there are two separate contracts, rather than one contract in two stages. In the first, strangers bind themselves to accept each other, as principals in a contract accept each other, and this is done with the *dos* because it is named and prescribed as a gift; this is the *sponsalia*. In the second, the principals are,

also Brundage, *Law, Sex, and Christian Society*, p. 263.

<sup>75</sup> '[E]adem enim societas quantum ad obligationem contrahitur in coniunctione que postea in rerum collatione perficitur et consummatur. [I]tem in pactione donationis eadem iniciatur donatio quantum ad obligationem, que mox peragitur in rei traditione': *Summa de matrimonio*, §6, pp. 271–72.

<sup>76</sup> 'Contra hec autem dicendum est quod in negotio societatis tota perficitur obligatio in pactione participandi lucri uel dampni, et ipsa eadem tota tollitur et perimitur in executione participati lucri et dampni. [E]t donatio quoque tota in pactione contrahitur, et tota in rei traditione soluitur': *Summa de matrimonio*, §9, p. 273.

strictly speaking, bound to render the carnal debt (*tenere ad reddendum carnale debitum*).<sup>77</sup> Rather than these being two stages of one contract, they are, in Vacarius's eyes, two separate contracts. Thus, the Gratian/Rufinian analysis of marriage as a sexually-consummated single contract is flawed, since there are clearly two obligations and therefore two contracts.

Thus Vacarius discards the idea of *matrimonium initiatum* or *futurum*, because they imply only one contract in marriage. He tries to illustrate his two-contract analysis with two examples drawn from the Justinianic-Roman law of *depositum* or *commodatum*, analogous to the law of bailment at English common law. A bailor, he states, is obliged firstly to receive goods; then, having discharged this obligation to receive them, he is then obliged to keep them. On this analysis, in *sponsalia* the *sponsus* has no obligation to render the marital debt, but instead to receive the *sponsa*; yet, in the *nuptias*, now that he has received her under the prior obligation, he must render the marital debt.<sup>78</sup>

### ***Matrimonium ratum and Perfectum***

Vacarius also rejects the concepts of *matrimonium perfectum* and *matrimonium ratum*, further planks in the consummation theories of Gratian and Rufinus. If, as some would have it, a *matrimonium ratum* ('ratified marriage') is indissoluble, Vacarius ventures, historically, there could have been no *ratum* marriages up to the time of Justinian, either in the time of Mary or in the Old Testament period.<sup>79</sup> Indeed, Vacarius continues, it is difficult to identify the notion of

<sup>77</sup> 'At in personarum societate, id est in matrimonii negotio, duos contingit fieri contractus. [P]rimus contractus est sponsaliorum, in quo etiam extranei obligantur ut ipse persone principales se mutuo accipiant cum dote et propter nuptias donatione prescripta et nominata. [S]ecundus contractus est nuptiarum in quo principales se mutuo dumtaxat tenentur ad reddendum carnale debitum': *Summa de matrimonio*, §9, p. 273.

<sup>78</sup> '[S]icut enim iste antequam res acciperet ex promissione ad custodiendum non tenebatur sed ad recipiendum, in secundo uero contractu, id est, in recipiendo, dum ab obligatione recipiendi absoluitur, obligatur ad custodiendum: ita et in sponsalibus ad reddendum debitum non tenetur sponsus, sed ad recipiendam sponsam: in nuptiis uero, iam ad recipiendam eam obligatione sublata, ad debitum reddendum tenentur': *Summa de matrimonio*, §9, p. 273. Note that the *Digest* also drew an analogy between marriages and other informal contracts: *Digest*, 20.1.4, p. 260.

<sup>79</sup> Vacarius notes, however, that the Old Testament recognized one instance of a *ratum* marriage. This was in the case of rape, where the law disallowed the man to divorce the girl and so was based on the guilt of the person's crime, rather than on any notion of justness that



*ratum* with indissolubility. For example, no Roman law contract, such as a *societas*, can be *ratum* since no-one is detained unwillingly therein; a mandate (*mandatum*), that is, a gratuitous undertaking by a party to perform a service for another at that other person's request, cannot be *ratum* either, since it can be dissolved by either party without penalty before the undertaking is complete; even a will is not *ratum*, since it can be invalidated (*irritum*) by the loss of legal status (*diminuto capitis*) of its testator.<sup>80</sup>

From these examples in Roman law, Vacarius concludes that, in the whole body of law, something that has legal value yet can be dissolved should be considered *ratum* as far as it can be proven; only something illegal or unenforceable is not considered *ratum*.<sup>81</sup> Vacarius posits, for instance, that a contract made under duress (*metus*) is *non ratum*, according to the *Digest*; but, on the other hand, only something proven unlawful can be unlawful or *non ratum*, such as a fraudulent transaction (*negotium*).<sup>82</sup>

Vacarius's arguments centre on unions involving non-baptised Christians. In addressing the question of whether a marriage between unbelievers (*infideles*) was *ratum*, Gratian's answer was 'no'. For Gratian, *ratum* meant a 'sexually consummated' union between a Christian man and woman, and therefore an indissoluble union.<sup>83</sup> But, Gratian added, a marriage between *infideles* could be

made the marriage *ratum*; moreover, this was based on the law of divorce: *Summa de matrimonio*, §36, p. 285.

<sup>80</sup> '[N]ullus contractus habebitur ratur, maxime societas, in qua emo inuitus detinetur. [S]ed nec etiam mandatum erit ratum. [...] [V]el irritum fieri, ea ratione nullum testamentum ratum erit, cum omne testamentum capitis diminutione possit irritum fieri': *Summa de matrimonio*, §36, p. 285; see also William J. A. C. Thomas, *Textbook of Roman Law* (Amsterdam: North Holland Publishing, 1976), p. 307.

<sup>81</sup> 'In toto autem corpore iuris id *ratum* esse dicitur quod de iure ualet, uel de iure probatur, et si solui possit, et eatenus habetur ratum quatenus ratum probatur, et id tantum quod est contra legem non ratum esse dicitur': *Summa de matrimonio*, §36, p. 285. In the context of Gratian, the term *irritum* had been discussed in terms of simoniacal ordinations: Gratian, *Decretum*, C. 9, q. 1, c. 6, col. 602. See also Uta-Renate Blumenthal, *The Investiture Controversy: Church and Monarchy from the Ninth to the Twelfth Century* (Philadelphia: University of Pennsylvania Press, 1988).

<sup>82</sup> *Summa de matrimonio*, §36, p. 285; cf. *Digest*, 4.2.1, p. 50; Andrew Borkowski, *Textbook on Roman Law*, 2nd edn (London: Blackstone, 1997), p. 354.

<sup>83</sup> Gaudemet, *Le mariage en Occident*, p. 176; Gratian, *Decretum*, C. 27, q. 2, dpc.34, col. 1073. Note that the notions of *ratum* and *irritum* ('invalid') had already been discussed in terms of simoniacal ordinations of the eleventh century: Blumenthal, *The Investiture Controversy*, p. 116.

a legal marriage (*matrimonium legitimum*) in conformity with civil law, but it could not be *ratum* (nor, therefore, *perfectum*), since the parties could separate by drawing up a bill of divorce and be free to re-marry.<sup>84</sup> In his *Summa*, Rufinus similarly categorized marriage as *initiatum* (*desponsatio*), and then *consummatum* (*copula*) or *ratum* (between *legitimae personae*).<sup>85</sup>

Was a marriage between unbelievers (*infideles*) *ratum*, Vacarius wondered? He was particularly interested in this matter in light of the dictum that: ‘no man may sunder what God has joined’. Vacarius observes in his writings that ‘local law’ (*lex fori*) allows parties to turn away a non-baptised partner, such as a Jew.<sup>86</sup> This act, he notes, was consistent with Augustine policy, which held that a marriage ‘without God’, that is, against the laws and precepts of the faithful, was not *ratum*. In addition, the ‘Pauline privilege’ preserved within canon law the right of a baptised Christian to turn away a non-baptised spouse.<sup>87</sup> Vacarius nonetheless rejects the premiss behind this consensus view: for him the ‘heavenly law’ (*lex polus*) does not permit that a non-baptised person be treated differently to a baptised Christian; marriage, even with an unbeliever, is *ratum*.<sup>88</sup> For Vacarius, then, marriage involving non-Christians could be *ratum*, and therefore

<sup>84</sup> Phillip Lyndon Reynolds, ‘Marriage, Sacramental and Indissoluble: Sources of the Catholic Doctrine’, *The Downside Review*, 109 (1991), 105–50 (pp. 133–34, n. 101).

<sup>85</sup> Rufinus, *Summa*, C. 27, q. 2, in *Die Summa*, ed. by Singer, p. 440. Guareschi noted that Rufinus’s invective may have been directed against either Hugh or Peter Lombard, depending on whether his *Summa decretorum* is (more accurately) assigned the earlier date of pre-1155, as suggested by Singer, or a post-dating of 1165, as suggested by Gouron. See the introduction to *Die Summa*, ed. by Singer, pp. cxi–cxviii; André Gouron, ‘Sur les sources civilistes’; Guareschi, ‘*Fra canones e leges*’, p. 112.

<sup>86</sup> ‘Quamuis ergo lege fori diuertere poterant’: *Summa de matrimonio*, §37, p. 286.

<sup>87</sup> That is, the right of a convert to Christianity, whose spouse has abandoned him or her on account of their faith, to obtain an ecclesiastical divorce with the right of remarriage (1 Corinthians, 7): Charles J. Reid, Jr., *Power over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law*, Emory University Studies in Law and Religion (Grand Rapids, MI: Eerdmans, 2004), p. 145. See also Gratian, *Decretum*, C. 28, q. 1, dpc. 17, col. 1089; Reynolds, ‘Marriage, Sacramental and Indissoluble’, p. 63.

<sup>88</sup> ‘Quare si ratum est matrimonium quia de iure ualet, ratum habendum est matrimonium etiam infidelium. [...] [T]amen lege poli non debeant *quod deus coniunxit*. [...] [I]d est, contra dei leges et precepta et inter fideles’: *Summa de matrimonio*, §36, pp. 285–86. Note that Vacarius refers to the heavenly law here as *lex polus*, in contrast to the *Liber pauperum*, where he refers to it as the ‘law laid down to us by heaven’ (*lex sit posita celitus*): *Liber pauperum*, Prologue, p. 1.

*perfectum*.<sup>89</sup> Vacarius's analysis of the law here does not merely mix Justinianic Roman law and canon law concepts in the Europe-wide common law called *ius commune*, but also considers local law or *ius proprium*.<sup>90</sup> Indeed, his overarching appeal to the 'law of heaven' is an attempt to put both the *ius commune* and the *ius proprium* on an equivalent footing. Thus, Vacarius disagrees with canonists' understanding of *ratum* marriages.

Vacarius applies the term *matrimonium perfectum* to the marriage between Mary and Joseph. As I will discuss in the following section, Vacarius understands the marriage of Mary and Joseph as having been formed by a *quasi traditio*. Vacarius queries: was that marriage 'perfected'?<sup>91</sup>

Vacarius answers that marriage, including that of Mary and Joseph, is formed and perfected by the mutual delivery of a right. Vacarius states that marriage is a matter of law, to which nothing is added by the sexual act (*concubitus*).<sup>92</sup> For once the man had taken on (*suscipere*) his wife, it is not wrongly said that he has the full power of his office (*plenam potestatem officii*) over her at law.<sup>93</sup> Therefore, asks Vacarius, how can this marriage be called imperfect, when it is perfect insofar as its office even before their laying down together?<sup>94</sup> Vacarius emphasizes that marriage is not perfected by the sexual act but rather by exercising the quasi-possessory office of marriage; in other words, it is a juridical matter, not a sexual one.

<sup>89</sup> 'Cum itaque sacramentum habeat coniugium infidelium, quare non dicitur ratum et perfectum': *Summa de matrimonio*, §38, p. 286.

<sup>90</sup> *Ius proprium* is the generic term to describe local law or each of the 'broad variety of heterogeneous local juridical norms' in medieval Europe: Manlio Bellomo, *The Common Legal Past of Europe 1000–1800*, Studies in Medieval and Early Modern Canon Law, 4 (Washington: Catholic University of America Press, 1995), pp. 78–III.

<sup>91</sup> 'Ex his itaque que sunt dicta uerius uidetur quod mutua quasi traditione re ipsa coniugium copuletur. Inquiramus autem an tunc etiam perficiatur', *Summa de matrimonio*, §17, p. 278; cf. '[Q]uando scilicet uxoris affectione eam habere cepit. [T]unc uero quasi tradita in uxorem intelligitur, quia per cohabitationem eius habebat facultatem': *Summa de matrimonio*, §13, p. 275.

<sup>92</sup> 'Et cum matrimonium ius tantum sit, nichil ei adici uidetur per concubitum, qui tantum facti est et non iuris': *Summa de matrimonio*, §17, p. 278.

<sup>93</sup> '[N]am post susceptam uxorem uir eius de iure plenam officii sui non male dicitur habere potestatem': *Summa de matrimonio*, §17, p. 278.

<sup>94</sup> '[C]ur ergo dicitur esse imperfectum quantum ad officium quod perfectum habet etiam ante concubitum?': *Summa de matrimonio*, §17, p. 278.

Vacarius also considers the notion of *matrimonium perfectum* in the context of the views of Ambrose. Ambrose emphasized the element of the sacrament in the vows of consent, as being the union of the soul to God.<sup>95</sup> Despite this ostensible stance in favour of the idea that the sexual act was not required to perfect marriage, Vacarius reveals that Ambrose, in fact, stands for the opposite view. Ambrose, he states, holds that the sexual act (*carnalis commixtio*) pertains to the perfection of marriage, since the perfection of marriage requires something 'natural', demonstrated by an 'act', both of which are satisfied in the sexual act.<sup>96</sup> Thus, Ambrose required spiritual vows followed by sexual intercourse. But, Vacarius asks the question: why does Ambrose require this sexual act? The necessity for an act, he reasons, is that, despite the vows which truly perfect marriage, nature may conceal that consent, where there are no sacramental vows.<sup>97</sup> This, he adds, is evident in the example of concubines.

Vacarius argues that Ambrose's requirement of perfection through the act of intercourse, to ensure that the earlier consent is not concealed, can be achieved in another way. He notes that another view achieves this same end by restricting the notion of a perfected marriage to those persons who are lawful: in this way it necessarily achieves what is missing.<sup>98</sup> Applying this opinion, rather than Ambrose's reasoning, to a practical example, Vacarius notes the case of a man who left his concubine because he realized she was the wife of another; subsequently, after her husband's death, he purported to marry her. But such a marriage, according to this requirement of 'lawfulness', could not be perfected; the two could not become one flesh in a lawful marriage, because they were

<sup>95</sup> 'Vnde Ambrosius: *In omni matrimonio coniunctio intelligitur spiritualis quam confirmat et perficit coniunctorum permixtio corporalis*': *Summa de matrimonio*, §6, p. 272 (cited from: Gratian, *Decretum*, C. 27, q. 2, c. 36, col. 1073); cf. *Summa de matrimonio*, § 11, p. 274. Note that Rufinus cites Ambrose as his main authority for his two-sacrament position: '[D]e quo sacramento Ambrosius infra h. quest. c. 36): "In omni", inquit, "matrimonio coniunctio intelligitur spiritualis" etc.': Rufinus, *Summa*, C. 27, q. 2, in *Die Summa*, ed. by Singer, p. 442.

<sup>96</sup> '[N]am potestate quidem nature ad efficiendum exigitur. [A]ctu uero ad demonstrandum matrimonium perfectum desideratur': *Summa de matrimonio*, §17, p. 278.

<sup>97</sup> 'Si autem queratur quare permixtione carnali perfici coniugium dicat, cum per consensum perficiatur et formetur, nam forma rei perfectio est, sciendum est quod matrimonium, quamuis extra perfectum per iuris formam appareat, tamen cum per nature potestatem latere possit, ad demonstrandam nature perfectionem actus permixtionis est efficax': *Summa de matrimonio*, §17, p. 278.

<sup>98</sup> 'Alia uero expositio uerbis uim facit, ea restringendo ad illas personas quas uocant legitimas. Immo et ut ibi deficiat necessario contingit': *Summa de matrimonio*, §18, p. 278.

already one in adultery. Therefore, no marriage could be contracted between them, and, in this way, it could be confirmed that the rights of sacrament hold firm.<sup>99</sup> In this way, Vacarius reveals the latent paradox in Ambrose's views on marriage: that of support for the consummationist theory of marriage.

### **'Bare' Consent**

But Vacarius does not confine his criticism to the consummation theory. The consent theory of marriage popularized by Peter Lombard lies in his sights too. Vacarius begins with the 'bare' theory of consent supported by Peter Lombard.<sup>100</sup> He notes the Lombard's distinction between words of present intent and words of future intent. While the first of these constitutes marriage, he argues, the second only constitutes spousals. Vacarius clarifies the distinction by reference to Roman law: 'Spousals is the mere promise of future marriage'.<sup>101</sup>

#### *Concubines.*

This semantic clarification of the Lombard's notion of pure consent is not the limit of Vacarius's critique of the consensual theory. Vacarius notes some problems with the notion that mere consent can form marriage. The first of these problems is that consent alone can be seen to give concubinage equal status with marriage.<sup>102</sup> The uncertain legal status afforded to concubines was a problem caused by their formless nature. Despite the previous example of a man not being able to marry his concubine, as supported by Ambrose, concubinage, states Vacarius, in fact has legal status.<sup>103</sup> Vacarius acknowledges the Roman law

<sup>99</sup> '[H]oc matrimonium secundum ea sententiam confirmari non potest, qui per legitimam coniunctionem una caro fieri non possunt, quia per adulterium una caro facti sunt. [...] [I]ta poterit confirmari ut iura sacramenti habeat': *Summa de matrimonio*, §18, p. 278. Note that this did not mean that concubinage was no longer recognized at law; it simply meant that such a union was not a lawful marriage: see *Summa de matrimonio*, §12, p. 274; §33, p. 284.

<sup>100</sup> For Peter Lombard's views on marriage generally, see Peter Lombard, *Sententiae*, 4, d. 27, cc. 2–5; d. 28, in *Sententiae in IV libris distinctae*, ed. by Brady, II, pp. 431–35. See also Brundage, *Law, Sex, and Christian Society*, p. 264, and the bibliography cited in Colish, *Peter Lombard*, II, p. 628, n. 410, and pp. 651–54.

<sup>101</sup> 'Sponsalia uero sunt mentio et repromissio futurarum nuptiarum': *Summa de matrimonio*, §4, p. 271; cf. *Digest*, 23.1.1, p. 294.

<sup>102</sup> '[E]x fide consensus formatur, aliquando in matrimonium, aliquando in concubinatum': *Summa de matrimonio*, §12, p. 274.

<sup>103</sup> '[N]am etiam concubinatus nomen iuris est': *Summa de matrimonio*, §12, p. 274.

position that concubinages were legally recognized relationships; this was in contrast to the early decretists, who believed that it was no longer appropriate, in an era characterized by ecclesiastical concern for property rights of legitimate heirs, to recognize concubinage as a marriage.<sup>104</sup>

For Vacarius, a concubinage may not be a valid marriage, but it is nevertheless a 'nuptial joining' (*confederatio nuptialis*). This means that, once joined (sexually), the parties cannot separate; this *confederatio*, according to decretists, could not be dissolved unless by divorce (*per divortium*), thus implying it had the enforceability of a valid marriage. The sacrament, he notes (based on the authority of Pope Hormisda), resides in the oath of consent which is perfected between the parties, not the sexual act.<sup>105</sup> Thus, what begins for Vacarius as a topic representing the dangers inherent in consensual unions unconfirmed by any form of ceremony or formality, becomes instead a revelation of the legal power of these unions where they are based on consent. This power of consent, for Vacarius, is of greater significance than any permanence attributed to relationships by dint of sexual intercourse between the parties. Additionally, such relationships as concubinages are lawful and sacramental, and thereby operate to preserve some rights — a sort of 'social net' — for women otherwise disadvantaged by their status as concubines.

#### *Clandestine Marriages.*

Vacarius turns to another negative argument used against proponents of the consent theory of marriage: the social problems caused by young girls entering clandestine marriages.<sup>106</sup> In Justinianic Roman law, spousals could be made by and for children more than seven years old, but their subsequent marriage

<sup>104</sup> *Digest*, 25.7.3, p. 333. See Gaudemet, *Le mariage en Occident*, pp. 173–74, and Brundage, *Law, Sex, and Christian Society*, pp. 297–300. Brundage notes that later decretists, such as Huguccio (fl. c. 1188), were prepared to recognize concubine relationships where the union was long-term, stable, and monogamous: Brundage, *Law, Sex, and Christian Society*, p. 299, n. 185.

<sup>105</sup> 'Si uero diuertere non potes iam illi adeo coniunctus, quid hoc facit nisi *confederatio nuptialis*, que, secundum Augustinum, nec etiam ex causa fornicationis, soluitur per diuorcium. [C]uius confederationis sacramentum sine carnis commixtione in ipsa fidei obligatione et consensu perfici ex decreto Ormisde pape supra patet': *Summa de matrimonio*, §33, p. 284. The decretal of Pope Hormisda to which Vacarius refers (*Summa de matrimonio*, §26, p. 282) is taken from Gratian, *Decretum*, C. 27, q. 2, c. 51, col. 1078. In modern editions, this canon is one of the *paleae*, but, as Maitland noted, Vacarius did not read it as such. See Part I, above, for my discussion of the dating of the *Summa de matrimonio*.

<sup>106</sup> For what follows, see Donahue, 'The Case of the Man', p. 46.

required consent by their parents or guardians.<sup>107</sup> But, in the context of canon law, acceptance of the consensual theory of marriage — requiring no formalities other than an exchange of consent between the parties — created social problems, with some children marrying against their families' wishes. Equally, such clandestine unions could be troublesome under the consummationist theory of marriage, with couples ratifying their marriages without the knowledge or approval of their families.

Vacarius's discussion centres on a decretal of 'Pope Evaristus' (fl. c. 100 CE), known as the canon *Aliter*, which was formulated to deal with this social problem by stipulating that a girl without majority age needed the consent of those having control over her for the marriage to be lawful; otherwise the union would be an adultery.<sup>108</sup> Such a provision ensured that parental consent would be required for any marriage involving a young girl not yet of legal age.<sup>109</sup> Controversy arose amongst commentators because, at the end of the decretal, the pope inserted a clause which provided an exception to this requirement, where the parties chose not to follow it 'by their own will and assisted by a lawful vow.'<sup>110</sup> Some commentators had interpreted this as an 'escape clause', which allowed a girl to marry without the consent of her parents, so long as she employed words of present consent to do so. On the other hand, this last clause could equally be interpreted as excluding the opinion of those who thought that marriage could be completed and perfected through sexual intercourse.<sup>111</sup>

Vacarius believes 'natural reason' requires the consent of family and relatives before a girl under legal age could be married, because the 'fragility of her sex', her age, and inexperience may lead her to marry disgracefully, to the ruin of her

<sup>107</sup> *Digest*, 23.1.14, p. 295.

<sup>108</sup> *Summa de matrimonio*, §16, p. 276; Gratian, *Decretum*, C. 27, q. 5, c.1, col. 1104. This decretal *Aliter* was a forged text: Reid, *Power over the Body*, pp. 35–36.

<sup>109</sup> On intentionality in canon law generally, see Stephan Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalien Gregors IX; Systematisch auf Grund der handschriftlichen Quellen dargestellt*, Studi e testi, 64 (Vatican City: Biblioteca Apostolica Vaticana, 1935).

<sup>110</sup> 'Nisi uoluntas propria suffragauerit et uota succurrerint legitima': *Summa de matrimonio*, §16, p. 276.

<sup>111</sup> 'Hec ita interpretantur ut querelam effugiant cuiusdam contrarietas: nam alias dicitur matrimonium contrahi *solo consensu*, per hoc intellegentes parentum consensum et propinquorum, contra pietatem et equitatem tam naturalem quam ciuilem, excludi. Sed forte, ut supra dictum est, melius hoc dictum intelligitur ad excludendam opinionem eorum qui putant quod in carnis commixtionne coniugium completur et perficiatur': *Summa de matrimonio*, §16, p. 276.

family.<sup>112</sup> This anxiety reflected the social reality of the later Middle Ages when, not just the marriage partners, but many levels of societal, family, political, and military concerns were important in a marriage choice.<sup>113</sup> Vacarius's expression of this public policy is a lone voice among the glossators. Decretists such as Rufinus, though recognizing that marriages took place without formalities or witnesses, sought to discourage clandestine marriages for this reason.<sup>114</sup>

Vacarius employs interpretative principles to argue that the proviso to the decretal does not weaken its main point. Vacarius argues that, if the canon *Aliter* were to be interpreted to allow young girls to marry without their parents' consent, then it would not be a precept at all but a license, thereby making lawful exactly what it sought to make unlawful.<sup>115</sup> If such a permissive view were to apply, Vacarius notes, then the institution of an heir, the number of witnesses, subscriptions, and the like, which were usually necessary for the making of a lawful will, would not make a will lawful, whereas other, more ancillary aspects permissive to the making of a will, such as a trust, legacies, and manumissions, would do so.<sup>116</sup>

Such a misinterpretation of the canon is, according to Vacarius, typical of canon law. In observing the uncertain meaning of this decretal, Vacarius notes

<sup>112</sup> '[Q]uid enim iustius est quam ut consilio parentum et uoluntate huiusmodi puellae propter sexus fragilitatem consulatur, ne inconsulta facilitate et plerumque lubrico etatis decepte in perniciem propriam et parentum dedecus turpissime nubant?': *Summa de matrimonio*, §16, p. 277; cf. '[N]am ... hoc fieri debere et civilis et naturalis ratio suadet in tantum ut iussum parentis praecedere debeat': *Institutes*, l.10 pr., p. 4.

<sup>113</sup> Charles Donahue, 'The Policy of Alexander III's Consent Theory of Marriage', in *Proceedings of the Fourth International Congress of Medieval Canon Law*, ed. by Stephan Kuttner, Monumenta Iuris Canonici, Series C, Subsidia, 5 (Vatican City: Biblioteca Apostolica Vaticana, 1976), pp. 251–81, 256–57. See also Donahue, 'The Case of the Man'.

<sup>114</sup> Rufinus, *Summa*, C. 30, q. 5 pr., in *Die Summa*, ed. by Singer, p. 468. Rufinus did, however, teach that couples who married secretly should be presumed to be living in adultery or fornication unless they could rebut this presumption: Brundage, *Law, Sex, and Christian Society*, p. 276, citing Rufinus, *Summa*, C. 30, q. 5, c. 1 v.

<sup>115</sup> '[N]am secundum eorum interpretacionem id quod non exigitur a lege sed tantum permittitur, ut pape Evcaristii forma et observatio, matrimonium facit esse *legitimum*, id uero quod a lege etiam exigitur, id est, sola nubentium voluntas, matrimonium facit esse non *legitimum*': *Summa de matrimonio*, §16, p. 277.

<sup>116</sup> '[Q]uod tale est ac si diceret heredis quidem institutio, numerus testium, subscriptiones et cetera que exiguntur, testamentum faciunt non *legitimum*, fidei commissum uero et legata et liberates et alia, que tantum permittuntur a lege, *legitimum* faciunt testamentum': *Summa de matrimonio*, §16, p. 277.



that canon law is characterized by such 'dissonant meanings and varying forms, many of which were useless because they are not observed'.<sup>117</sup> He also notes that canon law 'everyday slipped and warbled around human kind, particularly around those things which concerned custom'.<sup>118</sup> These canonists, he observed, 'vainly sought to restore the discord of varying opinion throughout to a concordance', although in doing so, they slipped even deeper into error.<sup>119</sup> This language reflects the original title of the *Decretum*, the *Concordia discordantium canonum* ('The Harmony of Discordant Canons'). Such musings by Vacarius on the subjective and uncertain nature of canon law, in particular, have been interpreted as demonstrating Vacarius's 'contempt for canon law'; but Southern rightly observed that he merely had a strong sense of the superiority of civilian law over canon law and pursued a career as an ecclesiastical bureaucrat which would have been 'unintelligible' in light of such antipathy to the canons.<sup>120</sup>

*Mary and Joseph.*

A third issue concerning consensual marriage was the dilemma of the chaste marriage of Mary and Joseph. How could theirs be a marriage if they did not have sexual intercourse?<sup>121</sup> In Gratian's dicta, Joseph and Mary were 'spouses', but were not married in a complete and perfect sense.<sup>122</sup> This was because of, or despite, the fact that Joseph and Mary had Augustine's three 'goods' of marriage: procreation, fidelity, and indissolubility.<sup>123</sup> Vacarius's approach to the issue centres on a passage from Augustine, cited in C. 27, q. 2, c. 39 of the *Decretum*, which he reproduces thus: 'Do not fear accepting Mary as your wife. By that

<sup>117</sup> 'Ecclesiastica namque iura dissonas recipiunt sententias et uarias formas, plerumque inutiles, quia non obseruantur': *Summa de matrimonio*, §16, p. 276.

<sup>118</sup> '[...] quasi ius ecclesiasticum, quod cotidie cum ipso humano genere labitur et defluit, maxime circa ea que sunt moris et consuetudinis [...]': *Summa de matrimonio*, §16, p. 277.

<sup>119</sup> 'Illi enim qui ad hoc frustra laborant ut quamlibet passim contrarietas discordiam reuocent ad concordiam, plerumque, ut uicium huiusmodi contra ueritatem euitare contendunt, in ueritate labuntur in peius, ut etiam in hoc casu': *Summa de matrimonio*, §16, p. 277.

<sup>120</sup> Southern, 'Master Vacarius', p. 264, n. 2; cf. De Ghellinck, 'Magister Vacarius', pp. 173–78; Kuttner and Rathbone, 'Anglo-Norman Canonists', p. 288, n. 25. Maitland merely observed that Vacarius's work was 'a civilian's protest against the mess that is being made of the law of marriage by canonists and divines': 'Magistri Vacarii', ed. by Maitland, p. 141.

<sup>121</sup> Brundage, *Law, Sex, and Christian Society*, p. 274; Resnick, 'Marriage in Medieval Culture'.

<sup>122</sup> Gratian, *Decretum*, C. 27, q. 2, dpc. 18, col. 1067.

<sup>123</sup> Gratian, *Decretum*, C. 27, q. 2, dpc. 39, col. 1074.

word *sponsa* means wife, because she was a future wife.<sup>124</sup> He is concerned to clarify at what point a wife, and in particular Mary, is ‘accepted’ as wife, and the marriage thereby formed. In reference to the consensualists’ theory, the moment when each accepted the other was determinative of a marriage having been formed. The slippage in terminology from *sponsa* to *uxor* followed.

When was Mary accepted as a wife? Vacarius answers that she was not so accepted at some future moment when the act of sexual intercourse would occur, as is usually the case. And even though she and Joseph were living together, this moment of acceptance was still a discrete moment in legal time, for it occurred ‘when he began to hold her with the affect of a wife (*affectio uxoris*)’. And when Joseph received Mary with *affectio uxoris*, she was his wife by quasi-*traditio*, because he had the *facultas* or capability by their living together.<sup>125</sup> The concept of *affectio maritalis* was borrowed from Roman law and understood as ‘a habitual attitude of respect, deference, and consideration towards one’s spouse that differentiated a marital relationship from casual cohabitation’; but in the hands of Gratian and the decretists, it took on a more affective quality, that is, as ‘an emotional bond between the spouses, a mutual attachment and regard for the well-being of one another that seems closely related to the quality the poets invoked in their descriptions of love’.<sup>126</sup> It is on this basis, suggests Vacarius, that Augustine described Mary as ‘wife’ (*coniunx*).

This is not so with many other Church Fathers, including John Chrysostom, Jerome, Origen, and Gregory, who denied there was a marriage between Joseph and Mary or that she was truly a wife.<sup>127</sup> Quasi-*traditio* was the Roman law *traditio* over incorporeal things or rights (*res incorporeales*); for example, the *traditio* of land and tolerance of servitude (a right exercised over land or a thing of which a person was not the owner) over that land amounted to a quasi-*traditio*, since it gave rise to Praetorian protection of the right of the transferee. In classical Roman law, the quasi-*traditio* created an estoppel or bar against the

<sup>124</sup> ‘[...] Augustinus ita scribens: *Noli timere accipere Mariam coniugem tuam. [Q]uo sermone sponsam coniugem nominat, quia futura erat coniunx*’: *Summa de matrimonio*, §13, p. 275.

<sup>125</sup> ‘[Q]uando scilicet uxoris affectione eam habere cepit. Tunc uero quasi tradita in uxorem intelligitur, quia per cohabitationem eius habebat facultatem’: *Summa de matrimonio*, §13, p. 275.

<sup>126</sup> Brundage, *Law, Sex, and Christian Society*, p. 239, and compare with pp. 41–42, 274; Noonan, ‘Power to Choose’, p. 425; John T. Noonan, ‘Marital Affection in the Canonists’, *Studia Gratiana*, 12 (1967), 479–509 (pp. 489–99).

<sup>127</sup> *Summa de matrimonio*, §§14–15, p. 276.

transferor; but, following Justinian's *Code*, it had a substantive effect.<sup>128</sup> But Vacarius notes the inconsistency in their approaches. They conceded that Mary was a parent and a *sponsa*, and so by this reasoning she was without doubt an *uxor*.<sup>129</sup> At the Annunciation, Vacarius additionally reasons, Mary fulfilled the spousal oath and promise, and became a wife.<sup>130</sup> By the same reasoning that Mary was a *sponsa* in the *sponsalia* earlier, she was later taken on as a wife, that is, according to Augustine, 'not carnally but mentally'. In other words, she was a wife in 'heart and mind'.<sup>131</sup>

Vacarius decides on the issue by focussing on a particular phrase from Origen. In his declaration that Mary was not a wife, Origen had stated that Mary was not a wife according to the custom of marriage (*secundum consuetudinem coniugii*). For Vacarius, this last phrase meant that Mary could not be a wife according to the carnal purpose, but rather according to the institution of law for the purposes of keeping the oath of chaste cohabitation.<sup>132</sup> Thus, Origen's criterion for the formation of marriage was the institution of the legal bond of chastity between Mary and Joseph. As Vacarius explains later in the treatise, this is a bond of law (*vinculum iuris*), rather than an 'act of execution' (*actus executionis*), which joined the Virgin Mary to Joseph; it is a union in sacrament made by the integrity of the pact (*foedus*), rather than any action of the flesh.<sup>133</sup> On the basis of this reading of Origen, Vacarius concludes his point. With true lawyerly guile, he cites Isidore's principle that the older authority, in

<sup>128</sup> Thomas, *Textbook of Roman Law*, p. 200.

<sup>129</sup> '[Q]uisque eorum discors aliqua ratione uideri potest, negando eam fuisse uxorem cum illam fuisse sponsam omnes fateantur. Qua enim ratione sponsa fuit, eadem procul dubio et uxor': *Summa de matrimonio*, §15, pp. 275–76.

<sup>130</sup> '[...] cum indubie angelico monitu sponsalium fides et promissio impleta fuerit inter eos, eadem ergo ratione et matrimonium secutum est, et illa uxor facta probatur': *Summa de matrimonio*, §15, p. 276.

<sup>131</sup> 'Qua ergo ratione promissa uel sponsa in sponsalibus prius fuit, eadem ratione in uxorem suscepta est posteam, et uxor facta, secundum Augustinum, *non carne sed mente*': *Summa de matrimonio*, §15, p. 276.

<sup>132</sup> 'Vnde Origenes: *In sequentibus demonstrabo quod nec ista tua coniunx secundum consuetudinem coniugii habeatur*, id est, secundum carnis propositum, sed secundum *legis instituta* ad custodiam et caste cohabitationis fidem pertinencia': *Summa de matrimonio*, §15, p. 276.

<sup>133</sup> 'Hanc autem rationem, id est, ut magis uinculum iuris in unum quoddam corpus plures iungat et uniat quam actus aliquis executionis [...] Cuius sacramentum suo iunxerat marito ipsam uirginem integritate federis, non actione carnis': *Summa de matrimonio*, §34, p. 284.

this case Origen, should take precedence. Thus, he allows Origen to trump Augustine in this case, but not before ensuring that Origen supports his argument.

In this way Vacarius relies on the traditional patristic authorities of Augustine and Origen in particular, as well as the principle of *antiquior auctoritas*, to bulwark the position that the marriage of Joseph and Mary was not purely by consent, but by the action of law.

## Conclusion

While scholarship has, for the most part, focused on the notion of *traditio* as playing a significant and unique role in Vacarius's marriage treatise, this attention has been at the expense of considering this concept as part of his overall analysis and critique of marriage theory in the second half of the twelfth century. His true focus, equally and indeed simultaneously, is on elucidating the ambiguities of terminology and the need for greater terminological precision. Loosely-applied terms such as *matrimonium initiatum*, *matrimonium futurum*, *matrimonium ratum*, and *matrimonium perfectum* are not worthy of being legally-enforceable, nor of being normative. Indeed, they actually conceal the true legal effect subsisting in the words themselves; that is, such words construe marriage as a developing process from beginning to completion, whereas, in Vacarius's reality, there are really two distinct stages or contracts.

## *Part III: Traditio in the Summa de matrimonio*

### ***Traditio in Roman Law***

*Traditio* in its strict sense had little to do with marriage, yet it was a term well-known to Roman legists such as Vacarius. In Justinianic Roman law, *traditio* was the means of transferring ownership of something from the owner to a transferee; the physical delivery of the item in question completed the formal transaction, rather than through any other procedure. By this act, without the need for any other formality, effective delivery of the thing to be transferred occurred.<sup>134</sup> The item also required a 'just cause' for its transfer, for example, by

<sup>134</sup> On the Roman law *traditio*, see *Institutes*, pp. 12–13. Also see Francis De Zulueta, *Roman Law of Sale: Introduction and Select Texts* (Oxford: Clarendon Press, 1954); Max Kaser, *Das*

way of a sale or a donation (gift). It also required good faith in the sense that transfer of ownership could be performed only by the owner of the item, or by a person authorized by him or her.<sup>135</sup> In classical Roman law and in Justinian's *corpus, traditio*, therefore, denoted the transfer of ownership by 'delivery' and was used in commercial and mercantile contexts.

Vacarius's first use of *traditio* in the *Summa de matrimonio* conforms to the usual sense in which it is employed in classical Roman law, that is, as the 'delivery' of property in an agreement. Vacarius's examples focus on the transaction of the *donatio pactionis*, or gift, whereupon the factual delivery of the gift completes the transaction.<sup>136</sup> Likewise, a *societas*, or partnership, is dissolved on the figurative 'delivery' or completion of the purpose of the partnership.<sup>137</sup>

### ***Traditio* in Marriage**

In his marriage treatise, however, Vacarius uses *traditio* in a manner that is both immediately familiar to, and extremely different from, this Roman law understanding of the term. Further, the *Summa de matrimonio* uses *traditio* in direct response to Gratian's own 'treatise on marriage', namely *causae* twenty-seven to thirty-six in the second part of his *Decretum*.<sup>138</sup> Similarly, it responds to

*Römische Privatrecht*, Handbuch der Altertumswissenschaft. 10. Abt.: Rechtsgeschichte des Altertums, 3 vols (Munich: Beck, 1955–59), and Reinhard Zimmermann, *The Law of Obligations: Roman Foundations of the Civilian Tradition* (Oxford: Clarendon Press, 1996).

<sup>135</sup> See the entry for '*traditio*' in Adolf Berger, *An Encyclopaedic Dictionary of Roman Law* (Philadelphia: American Philosophical Society, 1953); see also Thomas, *Textbook of Roman Law*, pp. 180–81; Borkowski, *Textbook on Roman Law*, pp. 197–200.

<sup>136</sup> '[I]tem in pactione donationis eadem iniciatur donatio quantum ad obligationem, que mox peragitur in rei traditione': *Summa de matrimonio*, §6, p. 272; '[E]t donatio quoque tota in pactione contrahitur, et tota in rei traditione soluitur': *Summa de matrimonio*, §9, p. 273.

<sup>137</sup> '[Q]uamvis etenim quantum ad obligationem societas et donatio iam facte dicantur, adhuc tamen quantum ad rei perfectionem et traditionem future nominantur': *Summa de matrimonio*, §8, p. 273.

<sup>138</sup> Omitting the *Tractatus de Poenitentia* c. 33, q. 3: Brundage, *Law, Sex, and Christian Society*, p. 231, n. 5. A translation of these marriage cases appears in *The Decretals: Book 4, with Gratianus, the Canonist. Marriage Canons from the Decretum*, trans. by John T. Noonan (Berkeley: Boalt Hall School of Law, 1967), now ed. and suppl. by Augustine Thompson, in 'Marriage Canons from the *Decretum* of Gratian and the *Decretals*, *Sext*, *Clementines* and *Extravagantes*', available from: <[http://faculty.cua.edu/pennington/Canon%20Law/marriage law.htm](http://faculty.cua.edu/pennington/Canon%20Law/marriage%20law.htm)> [accessed 7 November 2005].

the *summae* of decretists such as Rufinus, who had commented on and endorsed many of Gratian's *dicta* on marriage.

The central text on which Vacarius builds his alternative vision of *traditio* as formative of marriage is C. 27, q. 2, c. 51 in the *Decretum*. There are several things to note about this canon. First, although the Friedberg edition cites it as part of the *paleae*, and, additionally, as attributable to St Augustine, Vacarius does not categorize it as such. He seems not to have had an edition of the *Decretum* containing the *paleae*, for he attributes the canon to Pope Hormisdas (514–23 CE).<sup>139</sup> Second, the canon itself was cited by canonists as an authority for two different aspects of the law of marriage. It distinguished an oath 'of agreement' (*fides pactionis*) from an oath 'of consent' (*fides consensus*): if the former oath were broken by the husband and he took another woman, he had to stay with that second woman and pay a penalty for the broken oath. If he broke the latter oath, however, he had to send the second woman away and return to the first.<sup>140</sup> Thus, two types of *fides* were distinguished. Further, the canon then went on to explain why the *fides consensus* differed from the *fides pactionis*; the reason was that it arose: 'when he [the husband] consents by heart and mouth to take her (as his wife), and they give themselves each to the other by mutual agreement.'<sup>141</sup> In this use it recalls the idea of *affectio maritalis*, already discussed in the previous section.

Vacarius uses this canon to show that Jerome's authoritative support for the consummationist position is not sustainable. Jerome makes two conceptual errors in his stance, Vacarius argues.<sup>142</sup> First, Jerome is incorrect in the canon *Quapropter* from Gratian C. 27, q. 1, c. 37, in which Jerome states — in the classical exposition of the consummation theory — that *coniugium* is begun by

<sup>139</sup> 'Magistrii Vacarii', ed. by Maitland, p. 139.

<sup>140</sup> 'Duobus modis dicitur fides, pactionis et consensus. Si aliquis alicui mulieri fidem fecerit pactionis, non debet aliam ducere. Si aliam duxerit, penitentiam debet agere de fide mentita: maneat tamen cum illa, quam duxit. [...] Si autem fecerit fidem consensus, non licet aliam ducere. Si autem duxerit, dimittet eam, et adherebit priori': Gratian, *Decretum*, C. 27, q. 2, c. 51, col. 1078.

<sup>141</sup> 'Fides autem consensus est, quando, etiamsi non stringit manum, corde tamen et ore consentit ducere, et mutuo se concedunt unus alii, et mutuo se suscipiunt': Gratian, *Decretum*, C. 27, q. 2, c. 51, col. 1078.

<sup>142</sup> 'Aut forte dicemus quod Ieronymus, sicut in alio huius rei articulo errauerit, ita et *in hoc* errare potuit': *Summa de matrimonio*, §10, p. 274 [my emphasis].

a *sponsalis conventio* and perfected by *commixtio corporalis*.<sup>143</sup> The ‘error’ in *Quadpropter* is that the term ‘*sponsalis conventio*’ connotes merely an agreement regarding the future, and, therefore, is itself meaningless in constituting marriage. Jerome’s doctrine in truth relies on the sexual act as constituting marriage.<sup>144</sup>

The saint’s other ‘error’, similarly, is to see the *sponsalis conventio* as an agreement of present intent: ‘This also could be said, that by *sponsalis conventio* he [Jerome] understood the *conventio* that takes place in the *traditio* itself, in which each professes the willingness to take the other as spouse’.<sup>145</sup> As an example Vacarius offers the famous biblical story of Jacob, who had agreed prior spousals (*sponsalia*) with Rachel; this was to no effect when Leah was delivered (*tradere*) to Jacob and became his wife, and it occurred through ratification (*ratihabitio*), rather than consummation.<sup>146</sup> Thus, Jerome’s ‘errors’ in both cases are the same, a misunderstanding or misuse of the term *sponsalis conventio*. Instead, according to Vacarius, Jerome’s *sponsalis conventio* is better understood as constituted by *traditio*.

Vacarius equates the *sponsalis conventio* to the *fides* mentioned earlier. ‘[T]he same *fides* which is promised in the *sponsalia* concerning a future *traditio* is expressed afterwards in the *traditio* itself. Therefore the *fides* of a *pactio* concerning a future marriage is the same as the *fides* of a *consensus de praesenti*’.<sup>147</sup> Thus, he equates *sponsalis conventio* to both the *fides pactionis* and *consensus*.

<sup>143</sup> “Quapropter in filiabus uestris fornicabuntur, et sponsae uestrae adulterae erunt”. Notandum, quod in filiabus dicit futuram fornicationem, et in coniugiis adulteria, *que sponsali conuentione initiantur, et commixtione corporum perficiuntur*: Gratian, *Decretum*, C. 27, q. 1, c. 37, col. 1073 [my emphasis]; cf. *Summa de matrimonio*, §6, p. 272.

<sup>144</sup> See Part II, above, for examples of Vacarius’s criticism of the terms *matrimonium initiatum*, and *futurum*, such as in *Summa de matrimonio*, §§7–8, p. 273.

<sup>145</sup> ‘Potest etiam illud dici quod *sponsalem* eam conuentionem intellexerit que fit in traditione ipsa, in qua uterque profitur se uelle alterum in coniugem habere’: *Summa de matrimonio*, §10, p. 274.

<sup>146</sup> ‘Aliquando tamen sine sponsalibus nuptie contrahuntur, ut accidit in Lya, que nequaquam fuit Iacob promissa, sed tradita, non fuit ergo sponsa, sed uxor ratihabitione, non carnis commixtione’: *Summa de matrimonio*, §10, p. 273; cf. Genesis 29. 15–30. Also compare with Gratian’s distinction between *consensus precedens* and *subsequens*, the latter justifying Jacob’s marriage to Leah by ‘ratification’: Gratian, *Decretum*, C. 29, q. 1, §3, cols 1091–92.

<sup>147</sup> ‘[E]adem uero fides que promittitur in sponsalibus de futura traditione exprimitur postea in ipsa traditione. Ergo eadem dicitur et pactionis fides de futuro coniugio et fides consensus de presenti’: *Summa de matrimonio*, §10, p. 274.

What is more, he equates these to the concept of *traditio*. In short, he is confirming his previous view that a marriage cannot be ‘future’; it is a marriage, or it is nothing.

The true element of this *fides*, Vacarius observes, and that which makes and forms marriage, is ‘that’ *affectio*.<sup>148</sup> Isidore, however, understood *fides* as something arising from sexual intercourse; Augustine, on the other hand, called it the ‘first’ *fides*, although he later added the gloss ‘as she had not known or been known by coition’.<sup>149</sup> Therefore, according to Vacarius’s argument, Augustine does not understand the ‘first’ *fides* in relation to a second *fides*, but rather in respect of coition, which is accustomed to follow the first vows. That is to say, Jerome, Isidore, and Augustine were not concerned with the moment of the first pact, but with the first act of sexual intercourse. It is clear, however, that Vacarius has something else in mind when referring to *fides*, by way of his identifying it with that *affectio maritalis* which comprised the affective element in marriage. If *fides*, for Vacarius, is to be identified with *affectio maritalis*, and *fides* is to be subsequently identified with *traditio*, then it follows that *traditio* was to be linked to *affectio maritalis*.

It is on the basis of this process of concatenated identifications that Vacarius links *traditio* to notions of possession or quasi-possession. ‘[M]arriage’, he says, ‘is (a matter of) corporeal *traditio* and quasi-possession’. In his view, his argument ‘is proven in the words of the *Decretum*’.<sup>150</sup> This reference is, of course, to the decretal of Hormisdas at C. 27, q. 2, c. 51, which provides, in Vacarius’s transcription, that the *fides consensus* arises ‘[W]hen he [the husband] consents by heart and mouth to take her (as his wife), they give themselves each to the other by mutual agreement’.<sup>151</sup> The quasi-possession he refers to is the Roman

<sup>148</sup> ‘[E]t hec est illa fides, illa affectio que facit et format coniugium’: *Summa de matrimonio*, §10, p. 274.

<sup>149</sup> ‘[V]erius inquit Ysidorus: subaudi *quam ex concubitu*. [C]uius respectu, quia solet sequi, Augustinus uocat eam *primam*. [U]nde sequitur: *quam concubitu non agnoverat nec fuerat cogniturus*. [N]on ergo respectu secundo fidei dicitur prima, sed respectu concubitus, quia eam solet sequi’: *Summa de matrimonio*, §10, p. 274; cf. Gratian, *Decretum*, C. 27, q. 2, c. 6, c. 9, col. 1064.

<sup>150</sup> ‘Quod autem corporalis etiam traditionis et quasi possessionis sit coniunctio matrimonii probatur in uerbo decreti’: *Summa de matrimonio*, §12, p. 274.

<sup>151</sup> ‘[Q]uando corde et ore consentit ducere et unus alii consensiendo mutuo se suscipiunt’: *Summa de matrimonio*, §12, p. 274; ‘[H]anc sententiam, ut supra ostendimus’: *Summa de matrimonio*, §26, p. 281; ‘[Q]uando mutuo unus alii consentiendo se suscipiunt’: *Summa de matrimonio*, §19, p. 279; cf. Gratian, *Decretum*, C. 27, q. 2, c. 51, col. 1078.



law concept. Quasi-possession, as compared to outright ownership (*dominium*), in Roman law, was a right over a thing which could not be possessed. Thus, one who had such a right (such as a usufructuary), had an ostensible right to possession (such as the right of interdictary), which meant that an onus of proof applied against any other person seeking to prove a superior title to the thing in question.<sup>152</sup> Thus, quasi-possession meant that one had effective control over something, a *prima facie* right which had to be disproved before it could be displaced. Vacarius ties this in to the notion of *traditio* only vaguely, indicating that it connotes mutuality: 'Therefore, marriage is contracted by this thing, that is, mutual agreement.'<sup>153</sup>

It is noteworthy that, in addition, Vacarius conflates *traditio* with the notion of quasi-*traditio*. As discussed above, when Joseph received Mary with *affectio uxoris*, she was his wife by quasi-*traditio*, because he had *facultas* by their living together.<sup>154</sup> Vacarius emphasizes again the element of mutuality, also present in this quasi-*traditio*, which constitutes marriage.<sup>155</sup> Within Roman law, *quasi-traditio* was the *traditio* of a right (*res incorporeales*), rather than a thing. An example of a *quasi-traditio* was the *traditio* of land and tolerance of servitude (a right exercised over land or a thing of which a person was not the owner), which gave rise to Praetorian protection of the right of the transferee.<sup>156</sup> According to classical Roman law, the *quasi-traditio* created an estoppel or bar against the transferor; but, following Justinian's *Code*, it had substantive effect.

Vacarius turned from Jerome to St Augustine's conception of the marital debt, which insisted that there could be no marriage without sexual intercourse. In canon law, marital debt was the duty of a spouse to render themselves available for sexual intercourse on their spouse's request; this made sexual intercourse both a right and an obligation in marriage.<sup>157</sup> Charles Reid Jr. has linked the marital debt from canon law to Paul's statement in I Corinthians 7. 4: 'The wife does not have authority over her own body, but the husband *does*. And likewise the

<sup>152</sup> Thomas, *Textbook of Roman Law*, p. 147.

<sup>153</sup> '[E]rgo re, id est, mutua susceptione contrahitur coniugium': *Summa de matrimonio*, §12, p. 274.

<sup>154</sup> *Summa de matrimonio*, §13, p. 275; see Part II, above.

<sup>155</sup> 'Ex his itaque que sunt dicta uerius uidetur quod mutua quasi traditione re ipsa coniugium copuletur': *Summa de matrimonio*, §17, p. 278.

<sup>156</sup> Thomas, *Textbook of Roman Law*, p. 200.

<sup>157</sup> Brundage, *Law, Sex, and Christian Society*, p. 241.

husband does not have authority over his own body, but the wife *does*'.<sup>158</sup> It was from a similar passage in the work of Roman classical jurist, Paulus, according to Borkowski, that Roman civil law perceived the two elements of possession: the *corpus possessionis* (the factual relation between the person and thing) and the *animus possessionis* (the mental state that accompanied it).<sup>159</sup> Thus, the concept of marital debt was already tied up in understandings of legal possession in the different Romano-canonical traditions.

Vacarius notes that a decretal attributable to 'Alexander', though ostensibly supportive of Augustine's consummationist viewpoint, is actually contrary to it.<sup>160</sup> As Maitland revealed, this decretal was circulated widely in the twelfth century in support of the consummationist theory promulgated by the Bolognese school. It was a forged letter, falsely attributable to Pope Alexander I (cc. 109–19), and found, not in the *Decretum*, but in several other decretal collections, including the *Summa* of Rufinus.<sup>161</sup> According to Vacarius, it does not support the view that the sacrament lay in the act of intercourse, but rather in the 'lawful union' between husband and wife. This is evident, he reasons, from closely examining the words; it does not say 'unless there was sexual intercourse' they would not be one flesh, but instead emphasizes that 'unless they were one flesh in a lawful union', there would be no sacrament of marriage between them.<sup>162</sup> Thus, these words stress the legal nature of the union, rather than its carnal nature. By such a union the couple is indivisible in marriage prior to their sexually consummating it, so that:

[...] the man does not have power over his body but his wife does, and, on the other hand, he has power over his wife's body. Therefore, by the law itself, the body of the husband is the wife's and the body of the wife is the husband's. But what is each of

<sup>158</sup> Charles J. Reid Jr., "So it will be Found that the Right of Women in Many Cases is of Diminished Condition": Rights and the Legal Equality of Women in the Twelfth and Thirteenth-Century Canon Law', *Loyola of Los Angeles Law Review*, 35 (2002), 471–512 (p. 499).

<sup>159</sup> Borkowski, *Textbook on Roman Law*, p. 163; *Digest*, 41.2.3.1, p. 652.

<sup>160</sup> 'Nec huic sententie aduersantur forte uerba pape Alexandri': *Summa de matrimonio*, §20, p. 279.

<sup>161</sup> 'Magistrii Vacarii', ed. by Maitland, p. 139, nn. 7–9; cf. Rufinus, *Summa*, C. 27, q. 2, in *Die Summa*, ed. by Singer, p. 442. Compare below, in Part IV, in my discussion of divorce: *Summa de matrimonio*, §33, p. 284.

<sup>162</sup> '[N]on enim dixit 'nisi carnis commixtione una caro fiant,' sed *nisi maris et femine legitima coniunctione duo una caro fiant, nullum inter eos erit coniugii sacramentum*': *Summa de matrimonio*, §20, p. 279.

these bodies unless it is flesh? Therefore, the flesh of each is the flesh of the other. And so, in this way, both are one flesh not by the mixing of flesh but by the lawful union.<sup>163</sup>

But against this pseudo-Alexandrine decretal, Vacarius notes that Augustine continued to insist that there could be no marriage without a *commixtio sexus*. He was joined by the authority of Pope Leo, who had written that no marriage existed without *nuptiale misterium*.<sup>164</sup> These words of Augustine found their way into Gratian's discussion of the role of sex in marriage.<sup>165</sup> Vacarius notes Augustine's ambivalent comments about the need for sex in marriage, as discussed above, in which he stated that the word 'wife' was no lie even though the woman would never be mixed in flesh in the future. Vacarius compares Augustine's reasoning to the Roman law relating to wills: in asserting that a woman does not pertain to a marriage unless by sexual intercourse, that is by the presence of a natural power of mixing, in the same way a person does not pertain to a will, nor will there be a lawful will, without being instituted in the will.<sup>166</sup>

Vacarius takes Augustine's notion of marital debt to its logical extreme. If, Vacarius hypothesizes, there is some *commixtio carnalis* between the putative partners, without it yet coming to the sexual act (*non dum ad actum prodierit*), is this classed as marriage? And if during these first embraces (*inter primos amplexus*), Vacarius continues, Augustine had stopped the man, saying 'Do not touch her thus, brother, because she has not attained marriage (*nondum ad tuum pertinet matrimonium*)', surely the husband could rightfully respond that she was his wife 'from the very moment that she was delivered (*tradere*) to him, and from

<sup>163</sup> '[U]t uir sui corporis potestatem non habeat sed mulier, et econtrario uir mulieris. Ipso ergo iure uiri corpus est mulieri, et corpus mulieris est uiri. Sed quid est utriusque corpus nisi caro? Ergo utriusque caro alterius inuicem. [E]t ita duo non commixtione carnali sed coniunctione legitima sunt una caro': *Summa de matrimonio*, §20, p. 279.

<sup>164</sup> 'His tamen obici possunt illa Augustini uerba: *Non est dubium illam mulierem non pertinere ad matrimonium cum qua doctur [non fuisse] commixtio sexus*, et secundum papam Leonem *cum qua docetur non fuisse nuptiale misterium*': *Summa de matrimonio*, §21, p. 279; cf. Gratian, *Decretum*, C. 27, q. 2, c. 16, col. 1066; C. 27, q. 2, c. 17, col. 1066.

<sup>165</sup> 'Item cum secundum Augustinum illa mulier non pertineat ad matrimonium, cum qua docetur non fuisse commixtio sexus': Gratian, *Decretum*, C. 27, q. 2, c. 28, §1, col. 1071.

<sup>166</sup> 'Sibi itaque aduersari uidetur Augustinus, cum alibi dicat matrimonium esse perfectum sine concubitu ut supra ostensum est. [...] [I]deo asserendo dicit quod non aliter pertinet mulier ad matrimonium nisi sexus commixtio, id est miscendi naturalis potestas, cum ea fuerit, quemadmodum illa non pertinet ad testamentum cum qua non est factio testamenti, id est, cum qua de iure non potest fieri testamentum': *Summa de matrimonio*, §21, p. 279–80; cf. Gratian, *Decretum*, C. 27, q. 2, c. 9, col. 1064.

that moment had the full right to her from the first to the last embrace'.<sup>167</sup> Although Vacarius's presentation of Augustine's position is hyperbolic, his point is that the consummation of sexual relations is irrelevant to forming marriage. It is the *traditio* or the cognate verb *tradere* which is crucial to identifying the marital debt.

Exploring this distinction between *traditio* and sexual intercourse, Vacarius denies that marriage is perfected by the mixing of flesh. It is, he says, 'in the *traditio* itself that marriage is perfected and completed [...] For when the wife is delivered (*tradere*) to her husband, at once she is made his and he has the office and power of knowing her'.<sup>168</sup> It is noteworthy that here, as in the previous paragraph (and when referring to it in its classical Roman law meaning), that Vacarius conflates *traditio* with the cognate verb *tradere*.<sup>169</sup> But this does not detract from Vacarius's point: it is the *right* of the marital debt that the *traditio* includes, not the fact of the sexual act. Therefore, while canonists equated the concept of marital debt to sexual intercourse, Vacarius equates it instead to the equally physical, but legal, *traditio*.

Vacarius applies and clarifies the concept of *traditio* in his attack on the consensual theory. In the case of absent parties seeking to marry by proxy or letter, says Vacarius, there is no marriage. Since it was contrary to Roman (and natural law) for ownership (*dominium*) or possession of property to pass by intention alone, without some delivery (*traditio*) or some physical element; a similar requirement applies to marriage, he adds.<sup>170</sup> The sole exception which

<sup>167</sup> 'Si autem inter eos sit carnalis commixtio, quamvis non dum ad actum prodierit, et inter primos amplexus uiro diceret Augustinus: "Noli frater sic eam tractare, quia nondum ad tuum pertinet matrimonium" – nonne ille recte responderet: "Inciuiliter loqueris Augustine, cum mea sit uxor ad hoc tradita mihi, ut eandem habeam plenitudinem potestatis tam in primo quam in ultimo amplexu": *Summa de matrimonio*, §21, p. 280. I have partially relied on Maitland's translation of this passage: 'Magistrii Vacarii', ed. by Maitland, p. 136.

<sup>168</sup> '[Q]uod in ipsa tradicionem, ut sepe dictum est, perficiatur coniugium. [N]am uiro tradita est uxor, confestim sua facta est ut plenum habeat iam cognoscendi eam officium et potestatem': *Summa de matrimonio*, §30, p. 283.

<sup>169</sup> See other examples: *Summa de matrimonio*, §27, p. 282, and §27, p. 283; and note the similarities to a similar use at §10, p. 273.

<sup>170</sup> '[Q]ua ratione etiam inter absentes per nuntium uel per epistolam potest contrahi matrimonium. [§12.] Que sententia tam naturali iuri quam ciuili uidetur contraria, ut sola uoluntate et animi destinatione absque omni traditione possit fieri tua, cum promissa dote, illa que absens est. [C]um dominium uel possessio non possit solo animo adquiri absque corporali apprehensione, saltem oculis et affectu': *Summa de matrimonio*, §§11–12, p. 274. The phrase

Vacarius notes is the principle of ‘sight and intent’, a Roman law doctrine called *traditio longa manu*, where the thing to be possessed was to be indicated to the transferee in such circumstances that this person was able to forthwith assume control of it. Vacarius’ rejection of pure consent as constitutive of marriage is supported by his earlier statement, based on C. 27, q. 2, c. 51 from the *Decretum* which he attributes to Pope Hormisdas, that marriage needs a certain ‘something of corporeal delivery (*traditio*) and quasi-possession’.<sup>171</sup>

Vacarius makes no mention of the difference between the bare consensual theory of Peter Lombard and some of the Parisian theologians, and the Roman law notion of consent in marriage. The Roman civil law position for marriage between free citizens (*liberum matrimonium*) required no formality for its creation and continuance. It was necessary only that the parties intended to regard each other as husband and wife (*affectio maritalis*). As Brundage has argued, Peter Lombard’s notion of consent differed ‘radically’ from the consent theory of Roman law, in that Roman law assumed marital consent was ongoing and continuous, and could be revoked at any time by either party, while the Lombard held that consent in the present tense was given once for all and could not be revoked.<sup>172</sup> Vacarius, on the other hand, latches on to the concept of *affectio maritalis* and examines how fixed and certain a measure of marriage formation it can be if linked to *traditio*, as he understands it in his treatise.

### Constitutional and Sacramental Use of *Traditio*

For Vacarius, *traditio* is not just a legal term. In the passage in which he describes the *traditio* as identical with the canonistic doctrine of the ‘marital debt’, but not sexual intercourse, he makes an interesting analogy:

For when the woman is delivered to the man, immediately she became his so that he may have the complete duty and power of knowing her, *just like a priest legitimately ordained and instituted into some church as a minister from that time when he was led into possession of it, has the entire and perfect power of his office, before he even exercises it.*<sup>173</sup>

‘saltem oculis et affectu’ is the principle of ‘sight and intent’, or *traditio longa manu*. See Thomas, *Textbook of Roman Law*, p. 182; Borkowski, *Textbook on Roman Law*, pp. 197–98.

<sup>171</sup> *Summa de matrimonio*, §12, p. 274.

<sup>172</sup> Brundage, *Law, Sex, and Christian Society*, p. 264, n. 36. See also Esmein, *Le mariage en droit canonique*, I, pp. 119–24.

<sup>173</sup> ‘[N]am ubi uiro tradita est uxor, confestim sua facta est ut plenum habeat iam cognoscendi eam officium et potestatem, quemadmodum sacerdos legitime ordinatus et

The analogy being made is clearly to the distinction between the sacramental power of priestly office and the legitimate jurisdiction in which that power could be exercised. Robert Benson's work on medieval ecclesiastical offices observes that the canonist Rufinus drew a distinction between a bishop's power in the sacramental sphere (*auctoritas*) and his powers of jurisdiction (*administratio*) in exercising that sacramental power.<sup>174</sup> Drawing on the *Decretum*, on Roman law notions (such as the *plena potestas* of a proctor to bind his principal),<sup>175</sup> on theological discussions of the power to administer sacraments, and on conceptions of hierarchy appropriated from Hugh of St Victor, Rufinus, for the 'first time' in the Church's history, distinguished the two in precise juridical terms.<sup>176</sup> Vacarius, in contrast, was arguing that the power of jurisdiction automatically follows a perfect institution of the power in the first instance.

In the context of marriage, Vacarius had earlier distinguished *traditio* both from the *initiatum matrimonium* and sexual intercourse; this was because it constituted the moment of 'initiation and perfection'.<sup>177</sup> Something need not be exercised to be completed (*perfectus*), but, Vacarius argues, on that account it was completed when exercised. This was the case for bishops, priests, and deacons.<sup>178</sup> Vacarius also notes that, if the consummation theorists were to be believed, marriage is an exception to this principle.<sup>179</sup> Implicitly, Vacarius suggests that instant ratification applies to marriage in the same way that the *traditio* establishes, between husband and wife, the right to reciprocal possession of their bodies, regardless of whether they exercise the *copula carnis*.<sup>180</sup>

institutus in aliqua ecclesia minister, ex quo in eius possessione inductus est, integram et perfectam habet sui officii potestatem, ante etiam quam eam exerceat': *Summa de matrimonio*, §30, p. 283 [my emphasis].

<sup>174</sup> Benson, *The Bishop Elect*, p. 58, n. 4, citing Rufinus, *Summa*, D. 23, c. 1 v ['tamen sicut verus papa auctor. regnandi optin. in ecclesia'], in *Die Summa*, ed. by Singer, p. 52; see also Benson, *The Bishop Elect*, p. 65, n. 5, citing Rufinus, *Summa*, D. 60, pr. V. *ecce ex parte* etc., in *Die Summa*, ed. by Singer, p. 151 onwards.

<sup>175</sup> Benson, *The Bishop Elect*, p. 83, n. 16.

<sup>176</sup> *Ibid.*, p. 89.

<sup>177</sup> *Summa de matrimonio*, §3, p. 270.

<sup>178</sup> 'Non enim ideo res aliqua exercenda est ut perficiatur, sed ideo perficienda ut exerceatur. [U]t episcopus, sacerdos, diaconus': *Summa de matrimonio*, §30, p. 283.

<sup>179</sup> '[O]mnia enim perficiuntur priusquam exerceantur, exceptio matrimonio solo': *Summa de matrimonio*, §30, p. 283.

<sup>180</sup> Guareschi, 'Fra canones e leges', p. 125, n. 93.

Vacarius makes no real effort to distinguish the two; for him, possession of the office brings with it immediate rights of exercising it. He does not take into account, as Rufinus did, the process of confirmation, or consider the consequences of jurisdiction exercised by heretical or simoniacal priests.<sup>181</sup> Nevertheless, Vacarius does recognize the constitutional or political nature of rights arising as a result of the marital debt and the *traditio*, and the canonistic context of such debates.

For Vacarius, the *traditio* is also sacramental. It is not the carnal act of sexual intercourse, but a legal union between the two parties: '[...] [I]n the marriage union of two people, it seems they become one flesh by the bond of law rather than by works of flesh [...]'.<sup>182</sup> This phrase mirrors the sacrament of marriage expressed by Paul, in his maxim of the 'two becoming one flesh' (I Corinthians 7. 4). But, unlike the consummationists, it was a 'bond of law' which provides the sacramental quality, rather than the act of sexual intercourse.

Vacarius's expression of the sacramental understanding of the *traditio* appears to comprehend both an Augustinian understanding of sacrament, as a sign of a sacred thing, as well as the view of Hugh of St Victor, that of effecting what it signifies.<sup>183</sup> In the latter sense, Vacarius notes that the sanctity of sacrament is in its merit (*meritus*) or effect (*effectus*), which is applied for the good to their reward and for the evil to their judgment, in a similar way to medicine.<sup>184</sup>

Vacarius obviously disagrees with the *dicta* of Gratian, not to mention decretists like Rufinus, that the *sacramentum* of marriage resided in the act of

<sup>181</sup> Compare the notion of a bishop *electus* and *consecratus*: Benson, *The Bishop Elect*, pp. 50–53, noting Augustine's 'solution' to schismatic bishops ordaining priests in the fourth-century Donatist controversy. Also note Vacarius's failure to deal with the sacramental power of heretical priests in his *Liber contra*: Kuttner and Rathbone, 'Anglo-Norman Canonists', pp. 287–88, n. 22; see also Peter Diehl, 'Heresy as Grounds for Divorce', in *Proceedings of the Ninth International Congress of Medieval Canon Law, Munich, 13–18 July 1992*, ed. by Peter Landau and Joers Müller, Monumenta Iuris Canonici, Series C, Subsidia 10 (Vatican City: Biblioteca Apostolica Vaticana, 1997), pp. 975–96 (p. 978), who discusses Gratian's C. 28, q. 2, c. 2 (on the 'Pauline privilege' of divorce).

<sup>182</sup> '[I]n matrimonium coniunctio duorum in unam carnem magis fieri uidetur uinculo iuris quam opere carnis': *Summa de matrimonio*, §33, p. 284; cf. '[E]t ita duo non commixtione carnali sed coniunctione legitima sunt una caro': *Summa de matrimonio*, §20, p. 279.

<sup>183</sup> '[S]acramentum quippe est ipsum sacre rei signum': *Summa de matrimonio*, §37, p. 286.

<sup>184</sup> 'Alio modo dicitur sanctitas sacramenti effectus sacramenti, id est, meritum quod eius uirtus in bono operatur...cum tam ipsa uirtus, quam eius effectus, sanitas dici possit medicine': *Summa de matrimonio*, §37, p. 286.

sexual intercourse, that is the moment when, for the two parties, the union became a *matrimonium perfectum*.<sup>185</sup> The marriage of Mary and Joseph and its sacrament with Christ and the Church were achieved without any sexual intercourse, Vacarius pointedly notes.<sup>186</sup> In response to Rufinus's argument that Mary had a 'special privilege' (*speciale privilegium*), Vacarius argues that this was a false understanding of the situation; it was not 'the merit of the person, but the kind and quality of the union which completes the sacrament'.<sup>187</sup> As discussed above, through the notion of *fides*, Vacarius utilizes the canon he attributes to Pope Hormisda, to support a legal understanding of Mary's marriage to Joseph.<sup>188</sup>

Maitland agreed that Vacarius gave the notion of sacrament a role in *traditio*. In doing so, he suggested, Vacarius overcame the notion that flesh should be inherent in the idea of the sacrament.<sup>189</sup> From the moment of the *traditio*, Maitland argued, and consistently with the sacrament as expressed by Paul, of 'two becoming one flesh', the man has no power over his body, nor his wife over hers; at this moment, the law makes them 'one flesh' by giving each of them power over the other's body. The subsequent sexual union was not essential to this, and was a mere 'matter of fact'.<sup>190</sup> This distinction, Maitland continued, constituted the perfection of the legal act in the *traditio* and the fulfilment of the obligation which the earlier act created. Thus, he confirmed, from a more modern standpoint, Vacarius's understanding of the *traditio* as both sacramental and legal at the same time.

<sup>185</sup> 'Sed sciendum est, quod coniugium desponsatione initiatur, conmixtione perficitur. Unde inter sponsum et sponsam coniugium est, sed initiatum; inter copulatos est coniugium ratum': Gratian, *Decretum*, C. 27, q. 2, dpc. 34, col. 1073; cf. Rufinus, *Summa* to C. 27, pr. and C. 27, q. 2, in *Die Summa*, ed. by Singer, pp. 430–32.

<sup>186</sup> 'Hac itaque ratione infirmari uidetur ea sententia ut in carnis actu consistat coniugii sacramentum, maxime cum et beate Marie coniugium absque omni concubitu Christi et ecclesie legitur habuisse sacramentum': *Summa de matrimonio*, §19, p. 279.

<sup>187</sup> '[Q]uia non persone meritum sed coninuctionis species et proprietas perficit sacramentum': *Summa de matrimonio*, §19, p. 279.

<sup>188</sup> *Summa de matrimonio*, §19, p. 279; cf. Rufinus, *Summa*, C. 27, q. 2, in *Die Summa*, ed. by Singer, p. 445.

<sup>189</sup> 'Magistrii Vacarii', ed. by Maitland, p. 137. See also discussion in Guareschi, 'Fra canones e leges', p. 125, n. 95.

<sup>190</sup> *Summa de matrimonio*, §10, p. 274; 'Magistrii Vacarii', ed. by Maitland, p. 137.



### ***Traditio*: A Concept of Real Property or Contract?**

Given that the concept of *traditio* at the level of Roman law meant ‘delivery’, modern scholars have discussed whether its use by Vacarius in discussions of marriage law is based on property law or on some other basis, such as contract law. In other words, does *traditio* in Vacarius’s explanation represent marriage as akin to a property or contractual transaction? Maitland believed that Vacarius’s theory of *traditio* brought marriage ‘into line with the conveyance of property’.<sup>191</sup> This was suggested, according to Maitland, by the similarity between *traditio* and German custom law, which required the *Trauung* (wedding ceremony). Further, he saw the harmony between it and the Roman civil law notion of *deductio in domum mariti*, upon which great stress was still laid, despite the generally consensual and formless nature of Roman civil law marriage. It was also consistent, so Maitland believed, with English common lawyers’ notion that some change of *seisin* should be regarded as the act of marriage.

Guareschi believed that the Vacarian notion of *traditio* represents both property and contractual law notions. In Vacarius’s arguments against the consensualists’ notion of marriage, Guareschi observed, the Italian master argues that *dominium* or ownership could not pass without the physical presence of the thing to be owned; this shortcoming was overcome by the delivery or *traditio* of that object.<sup>192</sup> In the same way, in marriage law, the material element (*corpus*) permitted the passage of the mental element of consent (*animus*) to achieve the marriage bond (*vinculis*). Vacarius makes a similar reading of the marriage bond in the Scriptures, such as that between Jacob and Leah, and Mary and Joseph.<sup>193</sup> Guareschi held that Vacarius argued for a property law notion of marriage with respect to the *traditio*. He noted, however, Vacarius’s application to marriage formation of the two-contracts doctrine; accordingly, Guareschi held that Vacarius dealt with the whole marriage question on both contract and property law terms.

In contrast, Donahue argued that Vacarius’s understanding of marriage and *traditio* was not suggestive of a property theory of marriage, but one based on ‘real contract’. A real contract was not a legal concept specifically recognized in medieval law. In modern understandings of the term it represents an agreement, followed by delivery of a corporeal thing (*res*) which is the subject of the

<sup>191</sup> ‘Magistrii Vacarii’, ed. by Maitland, pp. 137–38, 141.

<sup>192</sup> Guareschi, ‘Fra *canones e leges*’, p. 125.

<sup>193</sup> *Ibid.*, pp. 123–24.

agreement; the closest example of a real contract is bailment.<sup>194</sup> In Roman law terms it pertained to things (*in rem*) as opposed to persons (*in personam*).<sup>195</sup> This concept would have been understandable to glossators and legists such as Vacarius. On Donahue's analysis, Vacarius initially makes the analogy that marriage is like the husband acquiring possession or ownership of his wife, but Vacarius then 'refines' this analogy to a real contract. That is, Vacarius's concept of *traditio* is equivalent to a 'bailment', for he states that the 'bailor' (*qui*) has an obligation to receive (*recipere*) the goods, just as the husband has the obligation to receive his wife in the marriage agreement; the bailor then has an obligation to keep (*custodire*) the goods, just as the husband has an obligation to keep his wife.<sup>196</sup> In this way, the husband derived quasi-possession of the bride, rather than legal possession. As we have seen, quasi-possession was something that could not be physically possessed.<sup>197</sup> Donahue suggested that Vacarius approached *traditio* in this way for two reasons. One was that it allowed him 'to generalize from the Roman *deductio* and the Germanic *Trauung* (*traditio*) (hence the portmanteau word *traductio*)'. The second was that it allowed Vacarius to replace 'the dominant relationship of the man implicit in a strictly property analogy with the much more modern notion of a *mutua susceptio*', as when he later stated that marriage was formed between them 'by a mutual quasi *traditio*'.<sup>198</sup>

### ***Traditio and Roman Lawyers: Deductio in domum***

The arguments supporting both the property view and the real contract view are based on a common premiss: the identification between Vacarius's understanding of *traditio* and the *deductio* or *traductio*.<sup>199</sup> The *deductio in domum* as it appears in Roman law describes the solemn introduction of the bride into the husband's house, often accompanied by religious ceremonies. Modern commentators, whilst acknowledging that *deductio* evidenced the beginning of

<sup>194</sup> Donahue, 'The Case of the Man', p. 25, n. 106.

<sup>195</sup> Thomas, *Textbook of Roman Law*, p. 271; Borkowski, *Textbook on Roman Law*, p. 303.

<sup>196</sup> *Summa de matrimonio*, §9, p. 273.

<sup>197</sup> *Summa de matrimonio*, §12, p. 274.

<sup>198</sup> Donahue, 'The Case of the Man', p. 25, n. 106; *Summa de matrimonio*, §17, p. 278.

<sup>199</sup> Donahue, 'The Case of the Man', p. 11; 'Magistrii Vacarii', ed. by Maitland, p. 138.

the marriage,<sup>200</sup> or was an ‘attendant’ circumstance to marriage (much like the dowry),<sup>201</sup> or that it was *prima facie* evidence of consent to marriage,<sup>202</sup> have unanimously conceded that it was not, strictly speaking, a prerequisite for a marriage to come into existence. Donahue’s overall thesis was that Vacarius’s concept of *traditio*/*deductio*/*traductio* represented an attempt by the civil law glossator to introduce an element of certainty to the uncertain notions of marriage formation. This Vacarius achieved by means of an objective indicator of this formation: the ‘portmanteau’ *traditio*, *deductio*, or *traductio*. This was for the civic-minded purpose of preventing runaway marriages.<sup>203</sup> In making this argument, he established that the glossators, in addition to consent, required a form of *ductio* or *traductio* in order to complete the formation of marriage.<sup>204</sup> In his *Summa Codicis* (1185–1190), Azo, for example, accepted Gratian’s distinction between *matrimonium initiatum* and *perfectum/ratum*, save that the *deductio*, rather than sexual intercourse, perfected the marriage begun by future consent.<sup>205</sup> Thus, many glossators followed this view in identifying the *deductio* with sexual intercourse.

Identification of the concept of *traditio*, as applied by Vacarius in his marriage treatise, with *deductio*/*traductio* is problematic for a number of reasons, in my view. In the first place, it is unlikely that Vacarius uses *traditio* and its cognates *tradere* as a catchall term to designate *deductio in domum*. Vacarius was a teacher and expert in Roman law, and would, therefore, have had a clear conception of this Roman law term. The fact that he never uses *deductio in domum mariti* or similar phrases in the treatise is significant; had he meant to identify *traditio* with that concept he no doubt would have explicitly done so. We should therefore err on the side of caution in attributing such a meaning to Vacarius in the absence of his specific words to that effect. Indeed, it is notable that he uses the term *traditio* in its usual Roman law sense; his *Liber pauperum*

<sup>200</sup> See the entry for *v. deductio in domum mariti* in Berger, *An Encyclopaedic Dictionary*.

<sup>201</sup> Thomas, *Textbook of Roman Law*, p. 424, where he cites *Digest*, 23.2.5.6, p. 295; 23.3.69.3, p. 305.

<sup>202</sup> Borkowski, *Textbook on Roman Law*, p. 123, where he cites *Digest*, 23.2.5, p. 295.

<sup>203</sup> Donahue, ‘The Case of the Man’, p. 46.

<sup>204</sup> Donahue, ‘The Case of the Man’, p. 28.

<sup>205</sup> Subsequently, however, even the need for a *deductio* was dropped in the writings of Accursius, writing some time before 1234. He rejected firmly the requirement of *deductio*, and marked the end of this theory in the Middle Ages: Donahue, ‘The Case of the Man’, pp. 32–33.

discusses *traditio* in its mercantile sense, without any reference to marriage. Vacarius there agrees with the commentator Accursius that the *traditio* presupposed the existence of an antecedent reason for delivery (*causa tradendi*), which the delivery (*tradens*) intended to satisfy, and that even if this reason or *causa* was mistaken, the property would nevertheless pass.<sup>206</sup> Furthermore, Book Five of the *Liber pauperum*, on marriage and spousals, makes no special reference to the two terms, and no attempt to identify them.

Second, to associate Vacarius's unique use of *traditio* with this Roman law concept of *deductio* is to ignore his multi-dimensional use of the term in the *Summa de matrimonio*. He uses the term as a heuristic device to critique such terms as *matrimonium initiatum* and *perfectum*. He wields it as an analytical tool in respect of words of consent, scrutinising the quality of the consent being given by the parties. He also uses the term both analagously and literally to connote the ideas constitutive of marriage, such as *affectio maritalis*, the *fides* of consent, as well as mutuality. Further, he uses the term as a sacramental signifier, as well as a sign of perfectly assuming a legal office and its concomitant rights of jurisdiction. Accordingly, Vacarius applies the term in a number of interesting and novel ways, at once familiar, but at the same time alien to contemporary legal understandings of the term.

### ***Traditio* and Canonists**

Clearly, Vacarius is in stark disagreement with Gratian and Rufinus's views that marriage was initiated by *sponsalia* and completed at the moment of sexual intercourse. This uniqueness among canonists is reflected by the description of Vacarius by some scholars as rejecting two opposing views and adopting the *traditio* notion as a 'third way',<sup>207</sup> or a *vox clamantis in deserto* in the marriage debate.<sup>208</sup> In addition, Kuttner and Rathbone believed the *Summa de matrimonio* demonstrates a 'relativistic and flexible methodology' which was quite distinct from the 'rigid dialectic' of Gratian.<sup>209</sup> In this way, Vacarius's treatise is unique methodologically and doctrinally.

<sup>206</sup> *Liber pauperum*, 7.16, pp. 212–15; see also *The Liber pauperum*, ed. by De Zulueta, p. cxxix.

<sup>207</sup> Brundage, *Law, Sex, and Christian Society*, pp. 96–97, 279.

<sup>208</sup> 'Magistri Vacarii', ed. by Maitland, p. 138.

<sup>209</sup> Kuttner and Rathbone, 'Anglo-Norman Canonists', p. 287.

But Vacarius's treatise invites comparison with one contemporary canonistic treatise in particular. Canonists from the German Rhineland also posited a notion of *traditio* in marriage. The anonymous *Summa 'Elegantius in iure'*, or *Summa Coloniensis*, is the best known treatise of the Rhineland school, and was composed around 1169.<sup>210</sup> This work has been variously attributed to Gerard of Pucelle, Godfrey of Cologne, or Bertram of Metz.<sup>211</sup> The common source linking it to Vacarius's work is unknown, although many have speculated on the possibilities. Gerard of Pucelle (c. 1115–84), a canonist and bishop of Coventry from 1183, whether or not he was the author, was in Cologne in the period 1166–68, during the time the *Summa Coloniensis* was being written. His links to the Canterbury *ecclesia* and later association with Richard of Dover suggest he knew Vacarius.<sup>212</sup> Vacarius had another link to the German canonists through Archbishop Roger of York, who had been King Henry II's agent in his dealings with the Callixtines during the papal schism, when Emperor Frederick Barbarossa established the anti-popes Paschal III (1164–68) and Callistus III (1168–78). Rainald von Dassel (c. 1115–67), who was Archbishop of Cologne between 1159 and 1167, and who was at the centre of the schismatic movement, even visited England during this time.<sup>213</sup>

In *canon* 36 of the third part of the *Summa Coloniensis* it states that marriage is constituted and 'perfected' by three elements: truth, signification, and

<sup>210</sup> *Summa 'Elegantius in iure divino' seu Coloniensis*, ed. by Gerald Fransen and Stephan Kuttner, Monumenta Iuris Canonici, Series A, Corpus Glossatorum, 1, 4 vols (Vatican City: Biblioteca Apostolica Vaticana, 1969–), III, pp. 1–56 (text). The date of c. 1169 is affirmed by Kuttner and Rathbone, 'Anglo-Norman Canonists', pp. 300–03.

<sup>211</sup> Kuttner and Rathbone attributed the *Summa Coloniensis* to Gerard of Pucelle in their 'Anglo-Norman Canonists', pp. 300–03; Gerbenzon attributed it to Bertram of Metz: Peter Gerbenzon, 'Bertram de Metz, the Author of 'Elegantius in Iure Divino' (Summa Coloniensis)?', *Traditio*, 21 (1965), 510–11. But Donahue noted that the views expressed by Bertram elsewhere in the *Summa Coloniensis* (1181–1212) were inconsistent with his commentary on the *Decretum*, C. 50, q. 17, c. 30, in his *De regulis iuris*: Donahue, 'The Case of the Man', p. 26.

<sup>212</sup> Brundage, *Law, Sex, and Christian Society*, p. 267, n. 50. Irrespective of the identity of the author, the hypothesis that Gerard Pucelle may have influenced the *Summa de matrimonio* cannot be dismissed, since he was resident in Cologne at the time the *Summa Coloniensis* was being written: Guareschi, 'Fra *canones e leges*', p. 130, n. 116; Esmein, *Mariage en droit canonique*, p. 114, n. 3; p. 118, n. 1.

<sup>213</sup> 'Magistri Vacarii', ed. by Maitland, pp. 137–38, n. 1; Guareschi, 'Fra *canones e leges*', p. 129.

obligation.<sup>214</sup> The *traditio* was but a part of this third constituent element of obligation, which, along with two others, made marriage. In explaining this third element, which includes *traditio*, the treatise asks:

Item: How do they [i.e. the parties to the marriage] not agree to sexual intercourse if they (consent) to an indissoluble custom for life?<sup>215</sup> Item: Since in this agreement each says to the other ‘I deliver myself to you’, if these words are received with meaning, then from that point the flesh of the one affects the other. For that is the case generally in contracts of this kind [i.e. marriage contracts], that in the *traditio* dominion is transferred. Then from this, the betrothed woman (*sponsa*) is delivered to the man; and since she is bound to him and delivered to him so from that point her flesh is the man’s even if the nuptial mystery is not yet completed with her. And this view Gratian seems to accept following much digression.<sup>216</sup>

The resemblance to Vacarius’s marriage treatise is quite striking, as many commentators have already observed.<sup>217</sup>

Like Vacarius, the *Summa Coloniensis* rejects the Gratian or Rufinian notion that sexual intercourse completes marriage; it conceives marriage as a mutually consensual act rather than a sexual act. Further, the Augustinian notion of the Pauline one-flesh-from-two sacrament is described in almost identical terms to Vacarius’s notion of the man and woman each giving themselves to the other via the *traditio*. The reference to the ‘transfer of dominion’ also mirrors Vacarius’s language in depicting the sacramental nature of the *traditio*. In addition, the

<sup>214</sup> ‘Matrimonium ergo perfectum dicitur tripliciter: ueritate, significatione, obligatione’: *Summa Coloniensis*, c. 36, in *Summa*, ed. by Fransen and Kuttner, p. 20.

<sup>215</sup> Cf. ‘[S]ed continuo matrimonium contrahit, quia ei in futurum carnis copulam et individue vite consuetudinem legitime consentit’: Rufinus, *Summa*, C. 27, q. 2, in *Die Summa*, ed. by Singer, p. 444.

<sup>216</sup> ‘Item: Quomodo non consentiunt in carnalem copulam si ad indiuiduam uite consuetudinem? Iterum: Cum in hoc pacto uterque dicat alteri “trado me tibi”, si uerba cum effectu accipiuntur, ex tunc caro utriusque alterius efficitur. Illud etiam generale est in huiusmodi contractibus ut traditione rei dominium transferatur. Proinde ex quo sponsa uiro tradita et cum eo uelata atque traducta est, ex tunc caro eius uiri est, etsi nuptiale misterium necdum in ea completum sit. Et hoc Gratianus post multas ambages sentire uidetur’: *Summa Coloniensis*, c. 36, in *Summa*, ed. by Fransen and Kuttner, p. 21. See also ‘Magistrii Vacarii’, ed. by Maitland, p. 137, n. 2; Donahue, ‘The Case of the Man’, p. 26, n. 108, and Guareschi, ‘*Fra canones e leges*’, p. 129, n. III, who all quote from C. G. A. Von Scheurl, *Die Entwicklung des kirchlichen Eheschliessungsrechts* (Erlangen: [n. p.], 1877). Scheurl’s edition has now been superseded by that of Frantzen and Kuttner.

<sup>217</sup> ‘Magistrii Vacarii’, ed. by Maitland, p. 137; Donahue, ‘The Case of the Man’, pp. 22, 25–26; Brundage, *Law, Sex, and Christian Society*, p. 267.

reference to ‘contracts of this kind’ reflects Vacarius’s notion of marriage as a partnership between persons (*societas personarum*).<sup>218</sup> This contract analysis goes no further in the German canonist’s work, however, while Vacarius uses it in reference to the agreement to marry and then extends it to the subsequent agreement to render the conjugal debt. The reference in the *Summa Coloniensis* to the woman as *sponsa*, in the above passage, locates the *traditio* in the *sponsalia*, or betrothal, a point similarly made by Vacarius.<sup>219</sup>

Furthermore, the Rhenish canonist notes that a form of words must both express and be understood by the recipient as expressing ‘meaning’, namely to be joined in ‘an indissoluble custom for life’, a phrase used by Rufinus.<sup>220</sup> In fact, as the anonymous author of the *Summa Coloniensis* explains, the words ‘I deliver myself to you’ are necessary and performative. Vacarius does not specify a particular formula of words, although he may have agreed with just such a formula as this, which utilized a cognate of the word *traditio*.

Despite an alternative schema in its overall conception of what constitutes a marriage, and its less central treatment of the concept of *traditio*, such differences in emphasis do not detract from the fundamental similarity in approach of the German work to Vacarius’s treatise. Their unerring agreement in utilizing *traditio* and other key concepts and terminology suggests a strong link between the two works. If my suggested dating of the *Summa de matrimonio* to the period 1166 to 1170 is accepted, the Rhenish work may well be one of the few extant decretist treatises of proven Vacarian influence.

## Conclusion

This chapter has shown, thus far, that the concept of *traditio* developed by Vacarius in his marriage law treatise is anything but straightforward. Against traditional Roman law understandings of that term as the delivery of real property in a commercial contract, Vacarius applies it to the competing models of consent and sexual consummation formative to marriage in order to challenge

<sup>218</sup> *Summa de matrimonio*, §9, p. 273.

<sup>219</sup> *Summa de matrimonio*, §10, p. 273.

<sup>220</sup> In another related context the translation of the phrase *individuum vitae consuetudinem* is contested: Colish translates it as ‘a common life under a common custom’ (Colish, *Peter Lombard*, II, p. 653), while Rosemann translates it as ‘the individual habit of life’ (Philipp Rosemann, *Peter Lombard* (Oxford: Oxford University Press, 2004), p. 176, n. 96).

them. His assertion is that is necessary to understand marriage as a physical and mental act, but that it is also a emotional one; instead of marriage being dominated by just one of these elements, however, he believes the word *traditio* encapsulates marriage as having all of them. In this vein, for Vacarius the term is itself sacramental. And while scholars have debated whether *traditio* is a property or contract term, and have identified it with the cognate *deductio in domum* from Roman law, such assessments miss the mark. Vacarius is challenging his readers, no doubt canonists, civilians, and others who used the law, to understand that marriage is, in essence and in form, a legal entity. The *traditio* is his means of expressing this.

#### *Part IV: Dissolution*

Quoting Rufinus, Vacarius, outlines eight situations where a non-consummated marriage could be dissolved (*dissolutio*): a subsequent *desponsatio* perfected by intercourse; adultery; rape; sorcery (*maleficium*); choice of a better life (*electio melioris propositi*) (the entry into religious orders, for instance); the perpetration of a serious crime; the intractable illness of the other party; and continuous detention in captivity.<sup>221</sup> Vacarius analyses several of these grounds in order to establish the basis for their existence.

#### **Subsequent *Desponsatio* Perfected by Sexual Intercourse**

Vacarius is at a loss to explain how a later *desponsatio*, followed by intercourse, could dissolve an earlier one.<sup>222</sup> For him, it was only explicable on the basis of *traditio*: there had been no delivery (*tradere*) of the bride at the first *desponsatio*,

<sup>221</sup> '[S]ecundum eos dissolui potest. Sunt autem hec: "Desponsatio posterior carnis commixtione perfecta, spontanea alterius fornicatio, raptus, maleficium, melioris propositi electio, horrendi criminis perpetratio, alterius perpetua egritudo, captiuatis continua detentio": *Summa de matrimonio*, §24, p. 281; cf. Rufinus, *Summa*, C. 27, q. 2, in *Die Summa*, ed. by Singer, p. 443; cf. *Summa Coloniensis*, c. 36, in *Summa*, ed. by Fransen and Kuttner, p. 21.

<sup>222</sup> 'Primo itaque quando posterior desponsatio propter carnis commixtionem soluat priorem, inquirere possum, inuenire autem fateor me nescire': *Summa de matrimonio*, §25, p. 281.



but there was by the time of the subsequent one.<sup>223</sup> Support for a subsequent betrothal perfected by an act of intercourse, even if it risked upsetting an earlier betrothal, is provided by the already frequently-cited C. 27, q. 2, c. 51, which Vacarius attributes to Hormisda. But he notes that an opposing view is provided by a decretal of Pope Siricius (384–98 CE); although it anathematized the subsequent marriage for its breaking of the earlier *desponsatio*, it did not prohibit the subsequent marriage.<sup>224</sup> This is similar, Vacarius believes, to the custom of preventing widows re-marrying within a year. In both cases, Vacarius reasons, the prohibition relates to punishing the injustice of sexual intercourse, rather than to the right of marriage itself. That is, the prohibition against a widow marrying within a year of her husband's death serves to condemn the unlawfulness of consanguinity and affinity, not the right to marry itself.<sup>225</sup> Vacarius concludes, however, that Siricius's decretal can be said, on his interpretation of it, to concern itself with the *fides consensus* which makes the woman a wife before the act of sexual intercourse, and on that account, punish her as wife; the act of sexual intercourse is not relevant to the question of her being a wife or not.<sup>226</sup> Vacarius thus provides a novel interpretation of a canon seemingly contrary to his argument.

## Sorcery

Vacarius discusses sorcery as a means of dissolving marriage. Hincmar of Rheims (d. 882), he notes, provided that a couple impeded from intercourse by sorcery or witchcraft, who subsequently separated, could not be reconciled later if, in

<sup>223</sup> '[N]am, si prior sit sponsa, id est, promissa tantum non tradita, posterior uero etiam tradita, eo ipse quod ducta est, manere debet cum eo': *Summa de matrimonio*, §25, p. 281.

<sup>224</sup> *Summa de matrimonio*, §25, p. 281; cf. C. 27, q. 2, c. 50. Pope Siricius barred clerics who had married widows from promotion to higher office: Brundage, *Law, Sex, and Christian Society*, pp. 111–12.

<sup>225</sup> '[S]icut prohibitio matrimonii cum uidua annum contracti ad iniuriam tantum pertinet commixtionis sanguinis dampnandam, et non ad ius matrimonii: et ideo ualet coniugium': *Summa de matrimonio*, §25, p. 281.

<sup>226</sup> 'Potest etiam illud dici quod de desponsata per fidem consensus papa Siricius questionem referat, que uxor etiam ante commixtionem fuit, et ideo secundum iuste dampnauit coniugium, ut ita commixtio nichil operetur in his casibus': *Summa de matrimonio*, §25, p. 281.

their subsequent relationships, the partners were able to have intercourse.<sup>227</sup> Vacarius reasons, however, that their inability to be reconciled was not down to the subsequent sexual intercourse with others. Rather, he says, it is because they had been 'separated by operation of law' from their previous spouses. By pointing to the specific language in the archbishop's decretal, Vacarius demonstrates that it was their 'legal' separation, or *divortium*, rather than the subsequent consummation, which was crucial to Hincmar.<sup>228</sup> If, Vacarius extrapolates, the earlier union had not been legally dissolved, it would not have been displaced by the subsequent union; this would have resulted in the co-existence of two marriages, an impossibility in both civil law and the canon law decretal he attributes to Hormisda. The husband had to dismiss the second wife and go back to the earlier wife.<sup>229</sup> Therefore, follows Vacarius, this pseudo-Hormisda canon is based on the legal status of marriage, not the act of sexual intercourse. Further, Pope Siricius's decretal did not establish the proposition that the act of intercourse could intervene to change the status of a *desponsatio*; only a legal act could do so.

Later in the treatise Vacarius acknowledges the difference drawn by canonists between congenital and temporary impotence.<sup>230</sup> On the basis of the principle that a marriage could only be perfected if law and nature allow it, he notes that if something natural, such as sexual incapacity, is missing, the marriage is not perfected. In the same way, a will is not completed if it is lacking one of these

<sup>227</sup> *Summa de matrimonio*, §26, p. 281; cf. Gratian, *Decretum*, C. 33, q. 1, c. 4, col. 1150; cf. Rufinus, *Summa*, C. 33, q. 1 pr., in *Die Summa*, ed. by Singer, pp. 496–97.

<sup>228</sup> '[S]ed ideo ad priores non possunt reuerti qu[a]m ab eis iure *separati*, perfecto cum aliis iure, ante carnis etiam commixtionem, iuncti sunt postea': *Summa de matrimonio*, §26, p. 281.

<sup>229</sup> 'Certe, si prior coniunctio de iure ualebat, simul due coniunctiones erunt, scilicet, secunda ualet. [Q]uod quidem tam de iure ciuile quam ex decreto Ormide pape est impossibile': *Summa de matrimonio*, §26, pp. 281–82; cf. Gratian, *Decretum*, C. 27, q. 2, c. 51, col. 1078.

<sup>230</sup> Rufinus noted the distinction, already made by Gratian, between congenital, or permanent, impotence and temporary sexual incapacity caused by *maleficium*, or sorcery. In the former case he saw no difficulty in dissolving a marriage, but foresaw complications in the latter case if the condition was temporary. He allowed divorce in both cases, but would rescind the divorce, and require reconciliation, if the impotent party subsequently regained sexual capacity: Rufinus, *Summa*, C. 33, q. 1, pr., in *Die Summa*, ed. by Singer, pp. 496–97. See also Brundage, *Law, Sex, and Christian Society*, p. 290.

two elements.<sup>231</sup> Citing Pope Gregory's decretal, he notes that, in the case of natural impotence, there is no perfected marriage, and a man may put away a woman who is congenitally sexually incapacitated.<sup>232</sup> In the case of impotence brought on by sorcery, he sees a problem, however. Although Hincmar's decretal permitted separation and remarriage in this circumstance, Vacarius is not so sure of its validity. He notes that, in such a case, the marriage is nevertheless perfected because there is nothing lacking in law or nature.<sup>233</sup> He does not pursue the issue, but simply notes this anomaly.

### Choice of a Religious Life

Vacarius deals with a further ground for dissolving a *desponsatio*: the 'choice of a better life' (*electio melioris propositi*). On this ground, according to Pope Eusebius, a *desponsa* could choose to go to a monastery or undertake some other religious life and thus break her promise. Although this choice is not permitted in the pseudo-Hormisda decretal (on the basis that the *fides pactionis* is broken), Vacarius explains that it is allowed under Eusebius's decretal.<sup>234</sup> Vacarius discusses the penalties that would flow for breaking the prior engagement. Normally, if they breached the *fides pactionis*, and the girl was given to another man, the parents would be penalized by having to return the *arras*; they would

<sup>231</sup> '[Q]uare non dicetur ratum et perfectum, cum perfectum dicatur quod ius et natura admittit? [U]nde si alterum deest, imperfectum est, id est, nullum, sicut imperfectum testamentum non est testamentum, ergo propter nature frigide impedimentum deficit matrimonium': *Summa de matrimonio*, §38, p. 286.

<sup>232</sup> '[E]t ideo Gregorius de naturaliter frigido sic loquitur': *Summa de matrimonio*, §38, p. 286; cf. Gratian, *Decretum*, C. 33, q. 1, c. 2, col. 1149.

<sup>233</sup> 'Quid ergo si solus casus impediat, puta sortiarie maleficium? [N]ichilominus perfectum est cui nichil deest de natura uel iure. [Q]uos enim natura non impedit perfecte ius, si adsit, obligare potest. [...] Cum ergo secundum sententiam Ygmari dirimi possit tale coniugium, ratio inquirenda est cur id fieri possit': *Summa de matrimonio*, §§38–39, pp. 286–87; cf. Gratian, *Decretum*, C. 33, q. 1, cc. 2–3, cols. 1149–50. Also note Gratian's observation on the apparent inconsistency between Gregory and Hincmar, the former canon preventing the impotent party remarrying while the latter did not: Gratian, *Decretum*, C. 33, q. 1, dpc. 4, col. 1150.

<sup>234</sup> 'De confugientibus autem ad electionem melioris propositi scribit Evsebius papa his uerbis [...] [N]on enim licet parentibus uel ipsi puella contra fidem uenire pactionis, sicut dictum est in decreto Ormisde pape': *Summa de matrimonio*, §27, p. 282; cf. Gratian, *Decretum*, C. 27, q. 2, c. 27, col. 1071.

also have to renounce the former *sponsalia*, with a failure to do so resulting in them incurring *infamia* for having two *sponsalia*.<sup>235</sup> But no penalty would be incurred by the family or the girl in the case of that *desponsa* choosing a religious life, as according to Pope Gregory; for, in such case, there is a just reason for breaking the vow — it can even be said that no vow was given in the first place.<sup>236</sup> Even the *sponsus* can renounce the *sponsalia* to take up the religious life; such a *sponsus* also had the right to renounce the engagement to take up a new *desponsa*, but his penalty would be forfeiture of the *arras*.<sup>237</sup> These are the limited circumstances, according to Vacarius, in which spouses-to-be could chose a religious life and thus renounce their oaths of engagement.

## Divorce

Vacarius notes the distinction between dissolution (*dissolvo* or *solvo*) and divorce (*divortium*). Only unconsummated *desponsatio* or *sponsalia* could be dissolved by either of the three grounds just discussed. But it was not the sexual act, Vacarius argues, which allowed dissolution, but the release of each person from their obligation.<sup>238</sup> Vacarius did, however, note that the situation is different once the parties had taken each other mutually as marriage partners (*se mutuo susceperere in coniuges*), since they were now joined (*iungere*). This was equivalent to the canonists' conception of the sexual act of consummation since, once it occurred, the Lord's dictum, 'What God has joined let no man sunder', applied; therefore

<sup>235</sup> '[P]enam patientur arrarum dumtaxat parentes puelle, si tamen prefatis sponsalibus, antequam secundo uiro traderetur, renunciauerint. [S]i uero id non fecerunt, penam etiam infamie sustinebunt': *Summa de matrimonio*, §27, p. 282. See *Digest*, 3.2.1, p. 36, regarding the penalty of *infamia* for having two *sponsalis*.

<sup>236</sup> 'Si uero non alium uirum sed monasterium puella elegerit, nullo nec arrarum nec fidei dampno multabitur ipsa uel parentes eius. Vnde Gregorius in registro': *Summa de matrimonio*, §27, p. 282; Gratian, *Decretum*, C. 27, q. 2, c. 28, col. 1071.

<sup>237</sup> '[E]rgo inuito sponso puellam non licet alii uiro tradere inpune. [L]icet autem sibi monasterium omnino sine pena': *Summa de matrimonio*, §27, p. 282.

<sup>238</sup> 'Hoc tamen notandum est quod in dissolutione sponsalium persone ab obligatione *solui* dicuntur': *Summa de matrimonio*, §28, p. 283.

the parties could only separate by divorce.<sup>239</sup> This, Vacarius implies, is different in its legal significance from dissolving a personal obligation.

Vacarius notes that the ‘Lordly dictum’, ‘What God joins no man may sunder’, traditionally applies to cases in which marriage is perfected by sexual intercourse.<sup>240</sup> In the next several paragraphs, he sets out his notion of *traditio* as equivalent to both the stage of perfection in marriage as well as its initiation.<sup>241</sup> But Vacarius is a practical realist. He observes that, despite his foregoing analysis demonstrating that marriage can be perfected *without* sexual intercourse, the Lordly precept nevertheless does not apply before the sexual act.<sup>242</sup> That is, it is understood by canon lawyers that a marriage will only be indissoluble once it is perfected by sexual intercourse.

Vacarius reveals that this is a common perception, by pointing to the many authorities that support it. Jerome, in his address of adultery, had stated that the wronged husband could separate from his adulterous wife on the basis that her act had divided what was previously one flesh.<sup>243</sup> Pope Gregory, when explaining how a man and wife cannot remain as one flesh if one decided to convert to a religious life, asked: for how could one part of the flesh be continent and the other not?<sup>244</sup> Vacarius also refers to the *dicta* of Gratian referring to similar examples, with Achatius and Alex leaving their spouses to return to religious lives. This latter example explains Vacarius, is slightly different, since Achatius

<sup>239</sup> ‘[Q]uia tantum obligate sunt, priusquam uero se mutuo susceperunt in coniuges, quia tunc, cum iuncti sunt, *separari* dicuntur. De his ergo uidetur dictum: *Quos deus coniunxit homo non separet*, ut *nisi ex causa fornicationis* separari non debeant’: *Summa de matrimonio*, §28, p. 283; cf. Matthew 19. 6.

<sup>240</sup> ‘Hic autem respondendum est quod de his quidem illud dominicum dictum est, sed tunc locum habet quando coniugium perfectum est per carnis commixtionem’: *Summa de matrimonio*, §29, p. 283.

<sup>241</sup> *Summa de matrimonio*, §§30–31, p. 283.

<sup>242</sup> ‘Sed quamuis predictae rationes cogant fateri absque concubitu matrimonium esse perfectum, tamen illud preceptum dominicum in eo locum non habet ante concubitum, scilicet, *Quos deus coniunxit, etc.*’: *Summa de matrimonio*, §32, p. 283.

<sup>243</sup> ‘[U]nde Yeronimus ita scribit de adultera’: *Summa de matrimonio*, §33, p. 284; *Decretum*, C. 32, q. 1, c. 2, col. 1116 (Jerome).

<sup>244</sup> ‘[I]tem Gregorius’: *Summa de matrimonio*, §33, p. 284; Gratian, *Decretum*, C. 27, q. 2, c. 19, cols 1067–68 (Gregory).

and Alex had not yet been made ‘one flesh’, and on that account, were permitted to leave their spouses.<sup>245</sup>

But the above analysis, Vacarius states, is actually misleading. In the marriage union of two-into-one-flesh, the union, in the eyes of Vacarius, is validated more by the work of law than flesh.<sup>246</sup> And this legal principle applies in the same way that the notion of sexual intercourse functions in Gregory’s ideas: that is, one part cannot remain in corruption without the other part also being corrupted, since they are both one flesh.<sup>247</sup> Vacarius thus converts a precept against moral corruption into a legal one; the notion of two-in-one is as much a legal as a sacramental principle for Vacarius.

He concludes his justification of divorce as a matter of law rather than flesh by referring to the topic of concubines. He recalls the decretal of pseudo-Alexander he has used earlier, in arguing against the consummationist understanding of marriage: ‘The work of flesh does not suffice unless it proceeds from a lawful union, for thus it is written: “They [the man and wife] will not be one flesh unless by a lawful union.”’<sup>248</sup> Vacarius then proceeds to demonstrate that concubinage is a lawful union. He even states that, based on C. 27, q. 2, c. 5 (‘Hormisda’), such a relationship has *fides*, in that it is a lawful — and indeed sacramental — union requiring separation or divorce, not mere dissolution.<sup>249</sup>

<sup>245</sup> ‘[E]rgo neuter istorum cum ea quam duxerat una caro factus fuit, et ideo continencie causa relinquere uxores licuit’: *Summa de matrimonio*, §33, p. 284; Gratian, *Decretum*, C. 27, q. 2, dp c. 26, col. 1070.

<sup>246</sup> ‘Sed respondendum est, ut supradiximus, quod in matrimonio coniunctio duorum in unam carnem magis fieri uidetur uinculo iuris quam operis carnis’: *Summa de matrimonio*, §33, p. 284.

<sup>247</sup> ‘[A]lioquin et in concubinato eadem erit ratio, ut non debeat una caro pro parte remanere in corruptione, pro parte ab ea transire, cum et ibi duo sint una caro’: *Summa de matrimonio*, §33, p. 284.

<sup>248</sup> ‘Non sufficit opus carnis nisi procedat ex legitima coniunctione, sic enim scriptum est *nisi legitima coniunctione duo una caro fiant*’: *Summa de matrimonio*, §33, p. 284; compare to §20, p. 279. For the provenance of pseudo-Alexander, see my discussion on concubines above in Part II of this chapter.

<sup>249</sup> ‘[C]uius confederationis sacramentum sine carnis commixtione in ipsa fidei obligatione et consensu perfici ex decreto Ormisde papa supra patet’: *Summa de matrimonio*, §33, p. 284. See my earlier discussion on the frequency with which Vacarius uses this canon, above in Part II of this chapter.

## A Valid Ground for Divorce

From his discussion of these various reasons for dissolving marriage and separating, Vacarius notes that the present state of play is this: it is the doctrine of certain modern masters that, in the case of impotence through sorcery, as in many other cases, spouses can be separated and can re-marry, so long as they have not yet 'become one flesh' through sexual intercourse.<sup>250</sup> Vacarius declares that his position proceeds, not from the laws or authorities, but from the misguided interpretation of these masters.<sup>251</sup> With this, he also notes Ambrose's authoritative interpretation of Paul's first letter to the Corinthians 7. 10–11:

And let a husband not put away his wife, and if he does, it is permitted for him to take another, and on that account, according to Ambrose, *the Apostle did not specify for the man what he did for the wife, namely that she be reconciled or remain unmarried.*<sup>252</sup>

Thus, he notes the inequitable treatment of women within canon law.

Vacarius draws his readers' attention to a little-known authority which, for him, offers the only legally-recognized means for a divorce, other than the Lordly dictum expressed by Paul. A decretal from the Council of Verberie (753 CE), he notes, held that a man who had to travel to another province, without hope of return, and whose wife did not wish to follow him, could take another wife.<sup>253</sup> He highlights the fact that this is contrary to existing canon law, since it grants more by this extraordinary dispensation than what it thinks it is worse to avoid. It is granted, Vacarius points out, on only one condition: that the man could not remain continent.<sup>254</sup> Moreover, in a reflection of Ambrose's general admonition

<sup>250</sup> 'Secundum doctrinam itaque quorundam modernorum magistrorum tam ex maleficio quam ex aliis pluribus causis, ut supra ostendimus, coniunges ante concubitum possunt separari et aliis iungi, quia nondum sunt una caro facti': *Summa de matrimonio*, §39, p. 287.

<sup>251</sup> 'Hec tamen ratio ex legis alicuius uel auctoritatis uerbis non procedit, sed magis ex magistrorum interpretatione descendit': *Summa de matrimonio*, §39, p. 287.

<sup>252</sup> '[E]x interpretatione uero Ambrosii super epistolam ad Corinthios: *Et si vir non debeat dimittere uxorem, si tamen dimiserit, licet ei ducere aliam, et ideo secundum Ambrosium non subdidit de uiro apostolus quod de uxore premiserat, scilicet, quod aut reconcilietur aut sine nuptiis maneat*': *Summa de matrimonio*, §39, p. 287; cf. Gratian, *Decretum*, C. 32, q. 7, c. 17, col. 1144.

<sup>253</sup> 'Ex concilio uero apud Vermeriam *is qui ex necessitate in aliam transierit prouinciam sine spe reuertendi, si uxor eius eum sequi noluerit, si se continere non potest, aliam cum penitentia ducat*': *Summa de matrimonio*, §39, p. 287.

<sup>254</sup> 'Quis dubitat contra ordinem iuris ecclesiastici fieri, et magis extraordinaria dispensatione ad id euitandum quod est deterius concedi? [U]nde sub conditione permittitur, scilicet, si continere se non poterit': *Summa de matrimonio*, §39, p. 287.

against putting away a wife, the decretal also specified that the man need also pay some penalty.<sup>255</sup> Only on this account will the dispensation avoid being granted with impunity.<sup>256</sup> Vacarius is here perhaps recalling other dispensations (such as the choice of a religious life), which attracted no penalty despite the broken *desponsatio*, not to mention cases in which a *sponsa* could be given given to another man in breach of the *desponsatio*, resulting in forfeit of the *arras*. Furthermore, argues Vacarius, this dispensation from Verberie is consistent with the Leviathan evils which made Moses create the law of divorce in the precepts of the Old Law, so as to prevent lowly things defiling the clean.<sup>257</sup>

Having explained the jurisprudence behind this rule, Vacarius acknowledges that this conciliar decision appeared to provide the only exception to the Lordly dictum that a man may not take another wife except by reason of fornication. Maitland paid credit to Vacarius for finding this authority, it being one of only two in the treatise found outside the *Decretum*; indeed, the part permitting divorce had been carefully excised from the *Decretum*. Maitland thought it was more likely that the authority was drawn from Regino of Prüm or Burchard of Worms.<sup>258</sup>

If, Vacarius continued, there were other lawful grounds for divorce, he challenges his readers to suggest them:

If, therefore, either because of intercourse or fornication or another credible reason one can find by truthful interpretation another regular exception to the Lord's rule, by which he generally ordered that no one was to leave his wife, except by reason of fornication, what harm will there be!<sup>259</sup>

<sup>255</sup> '[I]tem adicitur *cum penitencia*, quia sicut supra dixit Ambrosius': *Summa de matrimonio*, §39, p. 287.

<sup>256</sup> '[E]t ideo si ex dispensatione id faciat, ne fiat impune': *Summa de matrimonio*, §39, p. 287.

<sup>257</sup> 'Tales enim sunt testiculi [?] Leuiathan, propter quos Moyses in ueteri lege ordinarium ius diuorcii fecit, ea uidelicet ratione ne deterius contingeret': *Summa de matrimonio*, §39, p. 287.

<sup>258</sup> 'Magistrii Vacarii', ed. by Maitland, p. 140, n. 1; Gratian, *Decretum*, C. 34, q. 1, c. 4, col. 1259.

<sup>259</sup> 'Si ergo uel propter carnis commixtionem uel propter aliam probabilem rationem possit quidam uera interpretatione aliam inuenire regularem exceptionem dominice regule, qua generaliter precepit ne quis uxorem relinquat nisi ex causa fornicationis, que inuidia erit!': *Summa de matrimonio*, §39, p. 287.



Vacarius did not finish with a plea to his reader to reject the consummationist or consensualist model of marriage, or to adopt his own *traditio*-analysis. Instead he concludes:

Because of these things I wanted to choose from the aforesaid no opinion in particular, and to decline none, unless some reasoning is offered to me in one place and takes me to another position, without prejudice, however, of a better opinion, which by chance the skilled reader can find.<sup>260</sup>

This apparent open-endedness is at odds with the polemic characteristic of the concluding paragraphs to his other works, the *Tractatus de assumpto homine* and the *Liber contra*. This indicates that the audience for Vacarius's marriage treatise is likely one which does not respond to overt polemic, but rather to engaging, scholarly discussion and reflection. Such an audience was, in all likelihood, Parisian and Bolognese-trained canonists and theologians. As I will discuss in the next part of this chapter, this kind of audience was somewhat narrower than that aimed at in his other theological works.

Vacarius's account of the canon law of dissolution and separation recognizes the essential distinction between these two modes of ending a marriage. His analysis reveals the nature of the distinction for canonists: sexual intercourse between the parties. This is despite the case that all the authorities supporting this position can be seen, in reality, to have drawn the distinction based on the prior existence of a legally formed and enforceable marriage. Vacarius's example, drawn from the Council of Verberie, illustrates this, although equally it supports traditional views of marriage based on sexual consummation.

### *Part V: Marriage Law in Practice*

Vacarius's *Summa de matrimonio* is a work that reacts to, and impacts upon, the practice of canon law, Justinianic Roman law, and customary law. This can be observed in a number of twelfth-century marriage decretals involving Vacarius and his ideas. On a more immediate level, too, the treatise is practical in its tone, style, and method. As Maitland wisely observed in relation to Vacarius's marriage treatise: 'Often what looks like a speculation of abstract jurisprudence

<sup>260</sup> 'Ea propter nullam ex propositis sententiam eligere uolui quasi precipuam, nullamque declinare, nisi ratio aliqua se mihi offerens in aliam me extrahit partem, sine preiudicio tamen melioris sentencie, quam forte peritus lector poterit inuenire': *Summa de matrimonio*, §39, p. 287.

has been the outcome of a concrete lawsuit, and is none the worse for having its origin in real facts.<sup>261</sup>

## Marriage Decretals

In addition to his possible involvement in the Anstey litigation, Vacarius's career as a bureaucrat in the ecclesiastical households of Canterbury from the early 1140s, at York with Roger from 1159 to 1181, and then with Geoffrey Plantaganet after 1191, brought him into immediate contact with the marriage issues raised in the *Summa de matrimonio*. Furthermore, as a papal judge delegate from 1176 to 1180, his expertise in matters ecclesiastical, and perforce matrimonial, was recognized by the Church in Rome. It is now well-established that the twelfth century saw an unprecedented rise in papal decretals, the 'new law' of the twelfth century.<sup>262</sup> England, in particular, provided the majority of canon law litigation for the Roman law *curiae*; some 387 papal decretals were sent by Alexander III to her shores.<sup>263</sup>

<sup>261</sup> 'Magistri Vacarii', ed. by Maitland, p. 142. Although Maitland made this comment in linking Vacarius to the Anstey case, it is apposite to link him with other litigation too.

<sup>262</sup> Charles Duggan, 'Papal Judges Delegate and the Making of the "New Law" in the Twelfth Century', in *Cultures of Power: Lordship, Status and Process in Twelfth-Century Europe*, ed. by Thomas N. Bisson (Philadelphia: University of Pennsylvania Press, 1995), pp. 172–99; Charles Duggan, *Twelfth-Century Decretal Collections and their Importance in English History* (London: Athlone, 1963); Walter Ullmann, 'The Significance of Innocent III's Decretal, *Vergentis*', in *Études d'histoire du droit canonique dédiées à Gabriel le Bras* (Paris: Vrin, 1965), pp. 729–41, and repr. in his *The Papacy and Political Ideas in the Middle Ages* (London: Variorum, 1976), pp. 729–41; Stephan Kuttner, 'The Revival of Jurisprudence', in *Renaissance and Renewal in the Twelfth Century*, ed. by R. L. Benson, Giles Constable, and Carol D. Lanham (Cambridge, MA: Harvard University Press, 1982; repr. Toronto: University of Toronto Press, 1991), pp. 299–323; Harold Joseph Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983). Regarding marriage decretals, see Donahue, 'The Policy of Alexander III's Consent Theory of Marriage', pp. 251–81; Frederick William Maitland, *Roman Canon Law in the Church of England: Six Essays* (London: Methuen, 1898), p. 3; Eric Waldram Kemp, *An Introduction to Canon Law in the Church of England: Being the Lichfield Cathedral Divinity Lectures for 1956* (London: Hodder & Stoughton, 1957), p. 16.

<sup>263</sup> Charles Duggan, 'Decretals of Alexander III to England', in *Miscellanea Rolando Bandinelli, Papa Alessandro III*, ed. by Filippo Liotta and Roberto Tofanini (Siena: Accademia Senese degli Intronate, 1986), pp. 85–151 (p. 107).

Vacarius was integrally involved in this important legal development. The seven marriage law decretals laid out below, sent during the period 1159 to the early 1190s, are notable for their proximity to Vacarius's ecclesiastical archbishopric in York and its related diocese of Lincoln. Although only one is specifically directed to Vacarius himself, another four are addressed to his archbishop, Roger of York, and a further one was sent to Lincoln, a diocese within the Northern Province over which York held primacy. The decretals are characterized by their attention to matters of particular moment to Vacarius: the nature and role of consent as opposed to sexual intercourse in the formation of marriage, *sponsalia* involving young girls, clandestine marriage, and unlawful marriages.

Five marriage decretals attributed to Alexander III were sent to Roger, Archbishop of York, in the period 1159 to 1181, which coincided with Vacarius's employment in that household.<sup>264</sup> The first one, called *Ex litteris fraternitas*, written to Roger between 1169 and the early 1170s, deals with the marriage of nobleman William Fitzgodric to Aubrey de Lisours, who, by her previous husband, was mother to a young girl to whom William was previously betrothed by *sponsalia*.<sup>265</sup> This girl had been under the legal age at the time of the betrothal to William, but her parents had consented on her behalf.<sup>266</sup> When she reached lawful age, however, she withdrew her consent. In arguing his case, William claimed that the king had given the girl's mother in marriage to him after the death of her husband (the child's father), and he had accepted her to quiet the discord between the families. Consequently, William argued, he was released from the earlier betrothal. When the matter came before the Archbishop of York, he, as an injunctive measure, bound both William and Aubrey by oath not to come together without his licence until the matter had been heard. The pope approved this interim measure and ordered that the marriage between William

<sup>264</sup> Duggan, 'Decretals of Alexander III', pp. 106–46.

<sup>265</sup> *Ex litteris fraternitas*, reprinted in Duggan, 'Decretals of Alexander III', p. 126, no. 420; also in *Decretales ineditae saeculi XII*, ed. by Stanley Chodorow and Charles Duggan, Monumenta Iuris Canonici, Series B, Corpus Collectionum, 4 (Vatican City: Biblioteca Apostolica Vaticana, 1982), p. 123, no. 71, which also suggests the alternative dating of 1168–75. Hereafter, the text will be cited as: '*Decretales ineditae saeculi XII*'.

<sup>266</sup> 'W. quandam puellam infra annos nubile constitutam utroque parente consentiente desponsauit': *Ex litteris fraternitas*, in *Decretales ineditae saeculi XII*, p. 123, no. 71.

and Aubrey be forbidden, under penalty of anathema. Furthermore, Alexander declared that Aubrey and William were free to marry others of their choice.<sup>267</sup>

In a second decretal, *Accessit ad presentiam*, dealing with the same situation and composed after 1175, Alexander reversed the decision of the earlier decretal, and ordered Roger to confirm the marriage between Aubrey and William, as well as to declare the children born of it legitimate.<sup>268</sup> Such a decision was made on the basis of two findings. First, the girl had not been old enough — she was less than seven years old — at the time of her betrothal to William. Second, William had been released from his commitment to her. The marriage with Aubrey, although shameful, could therefore be tolerated if, in Roger's view, it avoided discord between the families. And if the union was tolerated by the Church, then the children could not be debarred from their inheritance from either parent.

The third decretal, *Ex litteris tue*, dating from the period 1159–81, deals with a similar situation, but this time involving a certain Walter.<sup>269</sup> Walter had been betrothed to the ten year-old daughter of a woman with whom he had had illicit relations. He had not sexually consummated the relationship with the daughter, however. The pope, 'not wishing to judge the secret matters of men's hearts' (*de occultis cordium iudico*), forbade Walter marrying either woman, but allowed him to marry another after serving penance.<sup>270</sup> The girl was deemed blameless and could therefore marry any other person of her choice. This decision was noteworthy for its prudence and sensitivity to issues political and dynastic, which were usually at play in matrimonial cases.

These three decretals hold that a non-consummated *sponsalia* cannot be binding or effective in forming a true marriage. In short, they find that the absence of sexual intercourse is determinative of this situation. They nevertheless consider seriously the issue of valid consent between the parties, and arguably, this is equally important a consideration in their decisions. Clearly, the young

<sup>267</sup> '[N]e tale matrimonium contrahant sub districtione iuramenti interidicas, eis significans ut in Domino cui uoluerint sine dubitatione aliqua nubant': *Ex litteris fraternitas*, in *Decretales ineditae saeculi XII*, p. 123, no. 71.

<sup>268</sup> *Accessit ad presentiam*, (JL: II, no. 13887; X: 4.2.5, cols 673–74), in Duggan, 'Decretals of Alexander III', p. 115, no. 12. See also *Decretales ineditae saeculi XII*, p. 124; Donahue, 'The Dating of Alexander III's Marriage Decretals', p. 120.

<sup>269</sup> *Ex litteris tue*, in Duggan, 'Decretals of Alexander III', p. 126, no. 432a; *Decretales ineditae saeculi XII*, p. 126, no. 72.

<sup>270</sup> 'Quoniam igitur non possumus nec debemus de occultis cordium iudicare': *Ex litteris tue*, in *Decretales ineditae saeculi XII*, p. 126, no. 72.

girls in question were deemed incapable of giving a valid consent to marriage. There is also a certain amount of *realpolitik* in the decisions. *Accessit ad presentiam* and *Ex litteris tue* place considerable emphasis on the implications that would follow each judgment, namely the effect on the legitimacy of the children and the fallout on relations between the two families. Thus, rather than any ideal concern with natural law values concerning the rights of young girls, the decisions reveal a far more pragmatic recognition of the need to appease the familial, financial, and feudal concerns of powerful noble families.<sup>271</sup>

The fourth decretal, also dated 1159–81, deals with a related issue involving young brides-to-be, namely that of clandestine marriage.<sup>272</sup> A certain girl, a daughter of Hugh, was betrothed to ‘G’ with her parents’ consent and the exchange of mutual promises. But after they had lived in the parental home, G put off the marriage and was clandestinely united with the girl’s sister in another district. The two lived together for more than a year and a child was born to them. Their marriage was eventually challenged before Roger, in the presence of both parties. The man, however, died during proceedings, and a dispute arose as to certain estates: the woman’s side claimed inheritance for the child as if it were born within lawful wedlock; the brothers of the man claimed inheritance on the basis that he had died without children, since his union had been unlawful. The archbishop did not wish to decide the matter and asked the pope whether the union was legitimate. The pope replied that the justice of public honour prevented such a marriage, and, if contracted, it should have been dissolved.<sup>273</sup> The son of the union, therefore, was not entitled to succession.

The fifth decretal, also bearing the date 1159–1181, is a general prohibition against clandestine unions.<sup>274</sup> Hearing that such marriages were contracted frequently in the province of York, and bemoaning the litigation arising therefrom, the pope ordered Roger to issue a general prohibition against secret marriages, under pain of perpetual anathema. Marriages were to take place publicly, in the presence of suitable witnesses (*in facie ecclesie*) so that marriages could gain validity and the parties be free from ambiguity.

<sup>271</sup> Donahue, ‘The Case of the Man’, p. 46.

<sup>272</sup> *Referente nobis*, (JL: II, 17623), in Duggan, ‘Decretals of Alexander III’, pp. 138–39, no. 854.

<sup>273</sup> See Duggan, ‘Decretals of Alexander III’, p. 139, no. 854.

<sup>274</sup> *Solet frequenter*, (JL: II, 14162), in Duggan, ‘Decretals of Alexander III’, pp. 143–44, no. 990.

These decretals, the *Referente nobis* and *Solet frequenter*, therefore knock down clandestine marriages. The lack of reasoning in these decision does not enable us to determine the true basis for the decisions. Vacarius's concern with clandestine unions, alluded to in his discussion of the decretal of Pope Evaristus, is reflected in these decisions.<sup>275</sup> But given that, in *Referente nobis*, the *desponsatio* had taken place, as well as the exchange of 'mutual promises', there is some indication that the consensual doctrine of marriage formation may have been applied here. Further, it is noteworthy that, in connection with this first decretal, mention is made of G not having taken his first bride outside the parental home. Like the Anstey litigation, it may be asked whether this is a reference to the *deductio* notion of Roman lawyers, or the *traditio* concept as developed by Vacarius in the *Summa de matrimonio*.

On Donahue's analysis of *traditio* as identifiable with the Roman law concept of *deductio in domum*, there was clearly no marriage between G and the young girl, since he had not taken her into his own home but only lived with her in his parents' home. On my understanding of Vacarius's notion of *traditio*, however, whether they lived together in G's home or his parents' is not important. What is crucial for Vacarius is whether they elicited an intention to be bound as man and wife. In this case, then, Vacarius would no doubt have found that the earlier union was valid and invalidated the second one.

The sixth decretal, known as *Significavit nobis*, sent by Pope Alexander III to Vacarius himself as well as the abbot of the Cistercian monastery of Fountains, is dated 30 June 1177.<sup>276</sup> The facts of the case were these: a certain Oliver of Anjou advised the court that he had been captured and imprisoned until he swore to marry a woman known only as 'Ha', or Hawise.<sup>277</sup> He escaped and married another woman, with whom he had children. The spurned Hawise commenced proceedings before Roger and the papal legate seeking an enforcement of her prior betrothal to Oliver. As an interim measure, Roger ordered that the *status quo* be maintained, ordering Oliver to take an oath to

<sup>275</sup> *Summa de matrimonio*, §16, p. 276; Donahue, 'The Case of the Man', p. 46.

<sup>276</sup> *Significatio nobis* (JL: II, 13937), in *Papal Decretals Relating to the Diocese of Lincoln in the Twelfth Century*, ed. and intro. by Walther Holtzmann and trans. and intro. by E. W. Kemp (Lincoln: Lincoln Record Society, 1954), p. 20 (text and translation), no. VIII; see also the commentary by Kemp, p. xxvi. Hereafter the text will be cited as: '*Papal Decretals Relating to the Diocese of Lincoln*'.

<sup>277</sup> I am grateful to Dr Paul Brand for his suggestion that the obvious female name to fit 'Ha' is 'Hawise'.

separate from the second woman until the matter was decided. But Hawise died shortly afterwards before the case formally opened.

Alexander directs the abbot and Vacarius that, if such force was brought to bear on Oliver to marry Hawise that he did not freely consent to the marriage, and if he did not have carnal knowledge of her after he had taken the oath, that he should be permitted to remain with the second woman whom had borne him children. If, on the other hand, Alexander directed, Oliver willingly consented to Hawise, and had carnal knowledge of her after he had sworn that he would marry her, then Oliver was forbidden to return to that second woman with whom he had had children, but could be given permission to marry another.<sup>278</sup>

Alexander, therefore, clearly presents the position that a promise to marry, followed by consummation, is regarded as constituting marriage. He adopts the consensualist doctrine, while also accommodating consummationist dogma. This represents the definitive stage of his marriage decretal-making.<sup>279</sup> On one interpretation, the pope's decision means that a *desponsatio per verba de futuro*, the consent to a future marriage, is converted to a real marriage by the *copula carnis*. Equally, it is possible that the pope supports the notion that consent given under duress could be converted into a real consent by the *copula carnis*. This 'cured' the principle of *vis* or *metus*, or duress, by which a forced consent to marriage was regarded as no consent, and therefore, a marriage contracted under duress was similarly void.<sup>280</sup>

This decretal from 1177 also introduces the *impedimentum criminis*, which forbade a man from marrying a woman with whom he had committed adultery. This prohibition ostensibly forbade Oliver from reuniting with the second woman with whom he had had children if his marriage with Hawise was shown to be valid (since that subsequent union would then be adulterous).

On the basis of his *Summa de matrimonio*, Vacarius would likely have reached the same decision, but for very different reasons. For Vacarius, the question of the validity of the prior union between Oliver and Hawise turns on whether there was a mutual *traditio* and agreement to give themselves to each other, thus demonstrating the *affectio maritalis* that accompanied such a *fides*. Sexual contact was irrelevant. The fact that Oliver was coerced meant that there could have been no *traditio* of the kind envisaged by Vacarius. On this reasoning, Vacarius is likely to have allowed the union between Oliver and the second woman. Of

<sup>278</sup> *Papal Decretals Relating to the Diocese of Lincoln*, p. 20, no. VIII.

<sup>279</sup> Donahue, 'The Policy of Alexander III's Consent Theory', p. 251.

<sup>280</sup> Esmein, *Le mariage en droit canonique*, I, p. 309; II, p. 252.

course, for Vacarius, the *impedimentum criminis* is grounded purely in legal considerations; if there is no legal impediment, such as adultery, Oliver would have been free to marry the second woman.

Finally, in a later decretal from the 1190s, to the diocese of Lincoln, over which York was primate, Pope Celestine III (1191–98) dealt with the *impedimentum criminis* issue, which arose again.<sup>281</sup> At this time Vacarius still occupied his position in the ecclesiastical household of York under Geoffrey. Celestine quoted authorities from Gratian's *Decretum* in support of the proposition that no one should be allowed to marry a woman with whom he had committed adultery. Vacarius, as I have already discussed, saw such a union as unlawful, and therefore not supportable as a marriage; in this case, then, he is consistent with Gratian.

## Roman and Canon Law

Vacarius uses the Justinianic Roman law term *societas personarum* to designate marriage, both in his treatise on marriage and in the *Liber pauperum*.<sup>282</sup> This terminology was commonly used by twelfth-century civilians. For instance, Rogerius and Placentinus, both prominent scholars and teachers of Justinianic Roman law in Provence in the second half of the twelfth century, and who had both studied Roman law at Bologna, similarly considered marriage as a *societas*, Rogerius in his *Summa Codicis*, and Placentinus in his *Summa Codicis* (which should be taken together with the anonymous *Summa Codicis Trecensis*).<sup>283</sup> This designation was uncontroversial, although it was more often used by Roman law glossators than canon law decretists.

<sup>281</sup> X: 4.7.5, col. 686, in *Papal Decretals Relating to the Diocese of Lincoln*, p. 56, no. XXV.

<sup>282</sup> *Summa de matrimonio*, §9, p. 273; *Liber pauperum*, 5.1, p. 175.

<sup>283</sup> 'Matrimonium est enim societas: divini et humani iuris communicatio': *Summa codicis* [Trecensis in this edition falsely attributed to Irnerius], ed. by H. Fitting (Berlin: Guttentag, 1894), p. 136; 'Consequens est ut de societate maris et femine audiamus que et matrimonium appellatur': Rogerius, *Summa codicis*, ed. by I. B. Palmiero (Bologna: [n. p.], 1888), p. 89; 'In libro superiori de societate quae contrahitur propter pecuniam quaerendam, nunc audiamus de societate coniugale': Placentinus, *Summa codicis*, in *Placentini Summa Codicis: accessit proemium quod in Moguntina editione desiderabatur* (Turin: Bottega d'Erasmus, 1962) [reprint of *In codicis Dn. Iustiniani sacratissimi principis ex repetita praelectione libros 9. summa a Placentino*, ed. by Nicholas Rhodius (Mainz: [n. p.], 1536), p. 193. All are cited in Guareschi, 'Fra canones e leges', p. 126, n. 100–02.



But Vacarius's argument that the distinction made by Gratian and other decretists between *matrimonium initiatum* and *perfectum/ratum* is untenable at Roman law is far more controversial, although its impact is difficult to gauge. I have discussed how Vacarius distinguished himself from, and contradicted, canon law authorities. Less obvious, however, is the fact that Vacarius's perspective in this matter also goes against the usual practice of civilian lawyers. A typical example is the view of marriage espoused in the *Summa Tübingensis*. The *Summa Tübingensis*, a work composed by a student of the Roman lawyer Placentinus in the early 1170s, outlined a vision of marriage which, although voiced in terms of the *traditio*, is different in its dealing with the distinction between the two phases of marriage:<sup>284</sup>

Marriage therefore is not the name of a legal right but the name of a fact [...] If you were an espoused woman and suffered me to lead you (*ducere*) to my house, another or new consent is not begun but that which is begun before is perfected by the leading (*ductio*). Indeed just as we have *traditio* in real contract so we have the leading in contracts of persons. That is to say, just as *traditio* is required after a real contract, so the leading perfects the espousal or spousal contract.<sup>285</sup>

Although the notion of *traditio* is seen to complete the marriage contract, in line with Vacarius's perspective, it is here utilized quite differently. It can be seen as a clear example, following Azo, of an accommodation of the canon law of Gratian and Rufinus, since the *perfectum matrimonium* was simply substituted for the *traditio*. In this way, the *Summa Tübingensis* identifies the *traditio* with the *commixtio carnalis* that perfects the *matrimonium initiatum*. Thus, it adopts the consummation initiation-perfection model by simply swapping the notion of *traditio* for that of *commixtio carnalis*. Many other Roman glossators did not openly acknowledge this apparent contradiction. Instead, they tried to portray *perfectum/ratum* as identical with the *traditio*.

As we have seen, Vacarius did not see the distinction between an *initiatum* and *perfectum* marriage as a mere transition; he viewed them as two entirely

<sup>284</sup> Donahue, 'The Case of the Man', pp. 20–21, n. 89.

<sup>285</sup> 'Matrimonium ergo nomen non est iuris sed facti [...] [S]i sponsa fueris, et me te in domum ducere patiaris, alius, sive novus consensus, non initur, sed qui retro fuerat initus, ductione perficitur. Quippe, sicut se habet traditio in contractibus rerum, sic se ductio in contractibus personarum. Hoc est, sicut traditio exigitur post contractum realem, sic ductio perficit et contractum sponsalitem sive sponsalem': *Summa Tübingensis* [= Rogerius, *Summa codicis*, ed. by Palmiero], 5, 1, 2, pp. 137–38, cited in Donahue, 'The Case of the Man', p. 22, n. 96.

separate transactions.<sup>286</sup> In this, Vacarius's text is unique, for it represents the first attempt by a civilian to make use of Roman law ideas, firstly, to acknowledge, then finally to resolve, an ostensibly 'canon law' debate.<sup>287</sup> Vacarius is alone in openly acknowledging that there is a conflict between Roman and canon law.

What is more Vacarius does not identify *traditio* with the *commixtio carnalis*. Nor does he identify *traditio* with 'the portmanteau word *traductio*', as Donahue has argued. As I have outlined in Part III of this chapter, for Vacarius, *traditio* is far from being a synonym for sexual intercourse or even a notion of mere physical delivery. It is at once both these concepts as well as being the mutual, legal moment that crystallized the formation of a marriage between spouses.

The two-contract analysis, by which Vacarius dissected the consummation theory, may have proved influential. The basis for the definitive form of Alexander III's decretals on marriage by the late 1170s, namely that marriages are made by present consent freely given between capable parties, appears to accept, even if independently, Vacarius's notion that there are two distinct contracts.<sup>288</sup> The first contract is in the parties receiving each other in marriage, the second in the rendering of the carnal debt of sexual intercourse.<sup>289</sup> But, as can be seen from the marriage decretals presented above, Alexander still retains some elements of the consummationists' understanding of marriage.

## Custom

It is arguable that Vacarius's notion of *traditio* encompasses elements of customary law, quite separate from the more formal and academic Romano-

<sup>286</sup> Donahue, 'The Case of the Man', p. 23. Compare Vacarius's *Liber pauperum*, which is even more conservative than this non-confrontational civilian approach; it accepts Gratian's conception of betrothal as the *initiatum matrimonium* and marriage as the *matrimonium consummatum*: *The Liber pauperum*, ed. by De Zulueta, pp. cxvii and 175.

<sup>287</sup> Donahue, 'The Case of the Man', pp. 25–26.

<sup>288</sup> Donahue, 'The Case of the Man', p. 49, and Donahue, 'The Policy of Alexander III's Consent Theory', pp. 262–67.

<sup>289</sup> Donahue, 'The Case of the Man', p. 25, n. 106; *Summa de matrimonio*, §17, p. 278; Guareschi, 'Fra *canones e leges*', p. 126, n. 99; Riccardo Orestano, 'Un errore che ha fatto historia: il matrimonio fra i contratti', in *'Diritto': incontri e scontri*, ed. by Riccardo Orestano (Bologna: Il Mulino, 1981), pp. 315–17 (n. 81), and Gaudemet, *Le mariage en Occident*, pp. 191–93. This two-contract analysis was evident in the *Summa* of Aquinas: Reynolds, 'Marriage, Sacramental and Indissoluble', p. 142.

canonical law. Maitland and Donahue identified the twelfth-century German concept of *Trauung* with the *traditio*.<sup>290</sup> The *Trauung*, normally called *desponsatio* within Roman law, was the Germanic equivalent to the spousals, or a promise to marry in the future. This promise was typically fulfilled by the *traditio* of the woman to her husband, without further agreement.<sup>291</sup> This material and physical sense of the *traditio* is, I have argued, not the essence of its use in the *Summa de matrimonio*. This is not to deny that Vacarius understands its sense of physicality and its commercial application; indeed, this makes his use of it in an analogous manner all the more effective.

On a broader level, Cassassa has taken up Maitland and Donahue's conception of *traditio* as equivalent to the *Trauung* or English *seisin*, that is, as a property law concept. His argument is that such a use is designed to make palatable to jingoistic Anglo-Normans a theory of marriage law which is 'foreign', that is, based on the consensual theory of the Parisian theologians or the consensual theory of Roman law itself. To allay any fears of this foreign law (as Roman law was perceived in Anglo-Norman England) taking over local custom, Vacarius uses the custom of the *traditio* as a sort of 'masking agent' in marriage.<sup>292</sup>

Because it is impossible to find out exactly what Vacarius's motive was in using the *traditio*, beyond the confines of the texts he has left us, Cassassa's argument is not entirely convincing. I have shown that Vacarius used the concept to bring together both foreign and familiar themes, so there is no escaping the fact that he utilized the term in an idiosyncratic and unique way. Nevertheless, Cassassa's argument that Vacarius's treatise was intended as a practical application of the law, and was not solely 'academic', is well made.<sup>293</sup> In this vein, Cassassa labelled Vacarius a precursor to the 'post-glossators' or 'commentators' who flourished in the fourteenth century; these legists were preoccupied with making the complex corpus of the civil law comprehensible

<sup>290</sup> 'Magistri Vacarii', ed. by Maitland, p. 138; Donahue, 'The Case of the Man', p. 25, n. 106; Reynolds, 'Marriage, Sacramental and Indissoluble', pp. 132–33.

<sup>291</sup> Reynolds, 'Marriage, Sacramental and Indissoluble', pp. 132–33.

<sup>292</sup> Charles Casassa, 'Magister Vacarius "Hic en Oxonefordia Legem Docuit": (1) An Analysis of the Dissemination of Roman Law in the Middle Ages', available from <<http://english-www.hss.cmu.edu/history/dissemination-of-law.text.html>> [accessed 26 August 1999], pp. 1–10 (p. 6).

<sup>293</sup> Casassa, 'Magister Vacarius', pp. 5–7.

and applicable to everyday life.<sup>294</sup> So too is Vacarius, in an earlier period. Given this intermingling of Roman, canon, and customary or feudal law in this context, the European Common Law or *ius commune* is a more accurate depiction for the possible sphere of understanding of the *traditio* concept.<sup>295</sup>

## Conclusion

A practical mood informs Vacarius's marriage treatise. Like the prologue to the *Liber pauperum*, it sets out his views on marriage in a concise manner. As Maitland observed, when compared to the *Decretum* of Gratian or the decretalists' commentaries on that work, or the lengthy *sententiae* of the Parisian masters, Vacarius's brief work is but a 'pamphlet'.<sup>296</sup> We can only speculate as to the purpose of such a brief work, but it suggests itself as just the sort of text that students in a mixed school of canon and Roman law could affordably copy into their own codex and gloss with the opinions of their learned masters. This practical design is consistent with the *Liber pauperum* of Vacarius, which epitomized the *Digest* and *Code* of Justinian, even though Justinian had expressly forbidden this. A contemporary civilian, Ralph of Niger, reports that Vacarius's text had removed the juristic skill (*iusperiti*) from the study of the Roman law.<sup>297</sup> No such conclusion could be opined of the *Summa de matrimonio*; it does not demand any less skill from legal practitioners, and indeed perhaps demands more. Nevertheless, the marriage treatise is a text to encourage debate and argument, while the *Liber pauperum* is instead a work of reference and of broader application.

Vacarius's attitude to parental consent in marriage also illustrates his practical response to problems that were ever present in his world. In line with other

<sup>294</sup> Thomas, *Textbook of Roman Law*, p. 9.

<sup>295</sup> Pennington, 'Learned Law', p. 2; Kenneth Pennington, 'Roman and Secular Law in the Middle Ages', in *Medieval Latin: An Introduction and Bibliographical Guide*, ed. by F. A. C. Mantello and A. G. Rigg (Washington: Catholic University of America Press, 1996), pp. 254–56 (p. 252).

<sup>296</sup> 'Magistri Vacarii', ed. by Maitland, p. 141.

<sup>297</sup> Guareschi, 'Fra *canones e leges*', p. 127, n. 103, citing Ralph of Niger, from Hermann Kantorowicz and Beryl Smalley, 'An English Theologian's View of Roman Law: Pepo, Irnerius and Ralph Niger', *Mediaeval and Renaissance Studies*, 1 (1941–43), 237–52 (p. 237). See also Leonard E. Boyle, 'The Beginnings of Legal Studies at Oxford', *Viator*, 14 (1983), 107–31 (p. 126).

civilians, Vacarius confirmed that young people, particularly young women, could not be trusted to make marriage choices.<sup>298</sup> The emphasis on parental consent is also evident in twelfth-century French law textbooks designed to advise practising lawyers and judges, including the *Exceptiones Petri*.<sup>299</sup> Women, so the prevailing view seemed to go, were likely to be deceived and bring disgrace on themselves and their family; requiring the consent of their parents, therefore, would ensure that the social, economic, and political aspects of the marriage were properly considered. Furthermore, Donahue has argued, any requirement of *traditio/deductio* made 'runaway' marriages more difficult, especially with the requirement that the handing over be formally done by the bride's father.<sup>300</sup> Even accepting Vacarius's less physical understanding of *traditio*, this formality nevertheless involved a legal process and a conscious understanding which could not easily be clandestine.

### *Final Conclusions*

This chapter has argued that marriage intersects with Vacarius's intellectual outlook in a number of diverse and non-homogenous ways. Although scholarship has focused on the *traditio* as a 'third' solution to the vexed twelfth-century problem of marriage formation, I have shown that Vacarius applies the concept far more subtly. He sees it as a heuristic device, not as an alternative solution. Further, for Vacarius, this debate is not a sterile, academic one; instead, it is based on the realities present in the twelfth century: separation, divorce, concubinage, and the clandestine marriages of young girls. That this is so is confirmed by the decretals discussed above, which are indicative of the type of cases heard by Vacarius as an ecclesiastical bureaucrat. Thus, marriage confronts Vacarius as both a functionary and a *litteratus*, that is, on a practical as well as on an intellectual level.

Throughout the treatise a common theme is Vacarius's use of reason within a methodology that gestures towards the more abstract of the scholastic techniques of logic and dialectic; it is also, at the same time, based on a firm belief in orthodoxy, as revealed in Scripture and law. The remaining chapters of

<sup>298</sup> Donahue, 'The Case of the Man', pp. 45–46.

<sup>299</sup> *Exceptiones Petri*, I, 51, in *Scritti giuridici preirneriani*, ed. by Carlo Guido, 2 vols (Milan: Vita e pensiero, 1935–38), I, p. 103; cited in Donahue, 'The Case of the Man', p. 47, n. 220.

<sup>300</sup> Donahue, 'The Case of the Man', p. 46.

this book turn to Vacarius's theological writings. In these works, I will demonstrate how Vacarius applied a similar methodology to that employed in the *Summa de matrimonio*.

More broadly, Vacarius's *Summa de matrimonio* offers, instead of the discordance of canon law, or the abstract learnedness of Roman civil law, a synthesis that transcends law, to encompass theology and sacramental matters. That is, the *Summa de matrimonio* represents the hermeneutic of the lawyer-theologian.

## CHRISTOLOGY

This chapter will examine Vacarius's christological thought, as set out in his *Tractatus de assumpto homine* and the final section of the *Liber contra multiplices et varios errores*. The explanation of human nature in the incarnate Christ, and the hypostatic union of His divine and human natures was a topic of great moment for Vacarius. The *Tractatus de assumpto homine* is a treatise devoted entirely to the topic, while the last section of the *Liber contra* deals with christology as part of a more general assault on the theological and sacramental errors of a former colleague, spanning across the Eucharist, baptism, and holy orders. In both works, however, Vacarius was particularly concerned with countering those who appeared to deny the existence of a human nature in the incarnate Christ.

Understanding the background debates on christology in the mid- to later-twelfth century is crucial in placing these works of Vacarius in context; I therefore begin this chapter with such an outline. I then turn to Vacarius's *Tractatus de assumpto homine*, and examine its place in this intellectual milieu. Finally, I will analyse the *Liber contra* in a similar way, comparing it to earlier Vacarian work.

### *Part I: Christological Debates in the Twelfth Century*

Vacarius dealt with the issue of the hypostatic union during a time in which it was a subject of great importance and conjecture, exceeded only by the related

issue of the Trinity.<sup>1</sup> Theological problems arose from the presupposition that Christ must have been both human and divine for mankind to benefit from his unique redemptive and soteriological role. Further, the Gospels claimed that the historical Christ claimed to be both God and man. Medieval theologians struggled to express and explain in Christ His simultaneous unity and duality as both God and man. The ecumenical council of Chalcedon in 451CE presented its definition to near-universal acceptance, that there was: ‘one [...] Christ [...] in two natures [...] without confusion, without change, without separation [...] united in one subsistence and one divine person’.<sup>2</sup> Yet it was in a more precise understanding of this definition and its terms that saw debates ensue from the fifth century to the twelfth.

The problem of theologically expressing this unity and duality in Christ dominated twelfth-century debates on the hypostatic union, especially after the reception of commentaries by Gilbert of Poitiers (1085/1090–1154) in the 1140s on the works of Boethius. As well as employing multivalent uses and meanings of the key terms ‘nature’, ‘person’, and ‘substance’, his commentaries provoked debate as to whether the words ‘substance’ and ‘person’ had different meanings in relation to the deity than to created beings, and, further, the appropriateness of the Aristotelian language of accident, including relation, to the deity.

In addition to working around problems of theological language, twelfth-century thinkers also had to avoid the challenges offered by traditional heresies, which had emerged in patristic times in the context of the Chalcedonian definition of christological orthodoxy.<sup>3</sup> Arianism denied that the Son was truly

<sup>1</sup> Lauge Olaf Nielsen, *Theology and Philosophy in the Twelfth Century: A Study of Gilbert Porreta's Thinking and the Theological Expositions of the Doctrine of the Incarnation during the Period 1130–1180* (Leiden: Brill, 1982), p. 19.

<sup>2</sup> ‘Unum eundemque Christum Filium Dominium unigenitum, in duabus naturis inconfuse, immutabiliter, indivise, inseparabiliter agnoscendum, nusquam sublata differentia naturam propter unionem magisque salva proprietate utriusque naturae, et in unam personam atque subsistentiam concurrente, non in duas personas partitum sive divisum, sed unum et eundem Filium unigenitum Deum Verbum Dominium Iesum Christum: sicut ante Prophetiae de eo et ipse nos Iesus Christus erudit, et Patrum nobis symbolorum tradidit’: *Enchiridion symbolorum definitionum et declarationum de rebus fidei et morum*, ed. by Heinrich Denzinger and Adolf Schönmetzer, 34th edn (Freiburg im Breisgau: Herder, 1967), p. 108.

<sup>3</sup> For the following brief definitions of Christological heresy, see *Catholic Encyclopaedia: An International Work of Reference on the Constitution, Doctrine, Discipline, and History of the Catholic Church*, 15 vols (New York: Robert Appleton, 1907–12), VII, pp. 706–16, v. *Incarnation*.



God; this view also denied that there were two natures in Christ, asserting instead that the nature of the Son took the place of the human soul in Christ. Nestorianism was so concerned with preserving the reality of Christ's human experience that it separated the divine and human in Him almost to the point of making Him into two persons. Adoptionism, which was closely related to Nestorianism in its assertion of a double sonship in Christ, held that the Word in the incarnation was the adoptive son of God. Monophysitism and Eutychianism taught that, in the person of the incarnate Christ, there was but a single, and divine, nature. Monothelitism acknowledged the two natures in Christ's divine person, but denied that He had two wills; Christ therefore had only one will. Apollinarianism denied that Christ had a human soul or mind; proponents rather thought that His mind was divinized. Such theological errors were upmost in the minds of twelfth-century theologians.

While questions about the words used of God dominated the Council of Sens in 1141,<sup>4</sup> and again at Rheims in 1148, after the middle of the twelfth century the debate seemed to shift towards defining the person of Christ. Conciliar debates in the 1160s and 1170s concerned themselves with two related issues: first, explaining the nature and mode of the hypostatic union (that is, the union of the second person of the Trinity with man in the incarnation), and second, Christological Nihililianism, namely the assertion that Christ, insofar as He was man, was not *aliquid*. In d. 6 of Book 3 of his *Sententiae*, the final edition of which was composed in the period 1155 to 1157, Peter Lombard summarized three opinions pertaining to these debates, each of which attempted to theorize the union of the divinity and humanity inherent in Christ.

### Peter Lombard and the Three Theories

Before examining his views, it should be noted that, although Lombard's presentation of the issue is helpful, it must be employed with certain caveats. First, it by no means represents all the competing views in the debates on twelfth-century christology.<sup>5</sup> Further, as a participant himself in the debate, Peter

<sup>4</sup> Mews argues convincingly for a date of 1141, rather than 1140: Constant J. Mews, 'The Council of Sens (1141): Abelard, Bernard, and the Fear of Social Upheaval', *Speculum*, 77 (2002), 342–82.

<sup>5</sup> The Lombard's was but one attempt to elaborate on the competing doctrines on the hypostatic union. Another division of the arguments, although ordered differently, appears in Gilbert of Poitiers, *Commentarius in Symbolum "Quicumque vult"*, ed. by Nikolaus M. Häring,

Lombard's schema cannot be relied on for impartiality or objectivity. It is, arguably, no more than a 'historically haphazardly chosen perspective', as Häring warns in his classic account of the three theories.<sup>6</sup> Nor is it altogether clear that the Lombard was specifically addressing the question of Christological Nihilianism in his formulation of the three theories.<sup>7</sup> Finally, the schema employed by the Lombard in his three theories tends to blur the variations in doctrine among those masters identified with any one theory.<sup>8</sup>

The Lombard's presentation of his first theory, also known as the 'assumptus homo theory',<sup>9</sup> insists on the concrete reality of the humanity of Christ, and, implicitly, that God as man is *aliquid*. It posits that, in the incarnation, humanity, as composed of body and soul, was assumed by the Word such that

*Mediaeval Studies*, 27 (1965), 25–53 (p. 48ff). See also the anonymous *Quaestiones et decisiones in Epistolas S. Pauli*, in PL: 175, cols 431–633, 433C–34D; Robert of Melun, *Sententiae*, Book 2 [London, British Library, Cod. Royal 2 F I, fols. 204<sup>v</sup>–241<sup>r</sup>, 233<sup>r</sup>], cited in Nielsen, *Theology and Philosophy*, pp. 243–44, n. 3.

<sup>6</sup> Nikolaus M. Häring, 'The Case of Gilbert de la Porrée Bishop of Poitiers (1142–1154)', *Mediaeval Studies*, 13 (1951), 1–40 (p. 28). For other accounts, see A. L. Lilley, 'A Christological Controversy of the Twelfth Century', *Journal of Theological Studies*, o. s., 39 (1938), 225–38 (pp. 231–38); David E. Luscombe, *The School of Peter Abelard: The Influence of Abelard's Thought in the Early Scholastic Period* (Cambridge: Cambridge University Press, 1969), pp. 268–73; Marcia L. Colish, *Peter Lombard*, 2 vols (Leiden: Brill, 1994), I, pp. 400–31; Nielsen, *Theology and Philosophy*, p. 19.

<sup>7</sup> As Principe points out, the Lombard's tripartite formulation involved an explanation of 'the mode of union of the two natures', rather than the two questions relating to the consequence of the union, which were to preoccupy twelfth-century theologians more fully: namely, 'Whether Christ insofar as He was man was something (*aliquid*)', and whether Christ was one or two (*aliud et aliud*). See Walter Henry Principe, *William of Auxerre's Theology of the Hypostatic Union* (Toronto: Pontifical Institute of Mediaeval Studies, 1963), pp. 67, 70. Rosemann also observes that the Lombard was here concerned to explain the nature of the divine in its union with humanity, specifically whether it became 'something other than was it was' (that is, *aliquid*) rather than the *aliquid-est* issue: Philipp Rosemann, *Peter Lombard* (Oxford: Oxford University Press, 2004), p. 238, n. 32.

<sup>8</sup> Principe observed that they 'were not three uniform positions but rather three general groupings or tendencies, each with certain common presuppositions and each with general agreement on answers to the various questions posed': Principe, *William of Auxerre's Theology*, p. 65.

<sup>9</sup> The alternative names were first used by Bernhard Barth in 'Ein neues Dokument zur Geschichte der fröhscholastischen Christologie', *Theologische Quartalschrift*, 100 (1919), 409–26; 101 (1920), 235–62 (p. 423), and were based on the apparent characteristic features of each doctrine.

it became identical with the Word. Thus, it was legitimate to say God is or becomes man, and man becomes or is God, without the human or divine nature losing anything that characterized or constituted them. According to the first theory, the Lombard states:

Some people, in fact, say that in the Incarnation of the Word a certain human being was constituted from a rational soul and a human flesh: out of which two every human being is constituted. And that human being began to be God — not, however, the nature of God, but the person of the Word [...] Not, however, by a migration of one nature into the other, but with the property of each of the natures being preserved did it come to pass that God was that substance, and that substance was God [...] And although they say that that human being [that is, Christ] subsists form a rational soul and human flesh, nonetheless they do not confess that it is composed of two natures, divine and human; nor [do they confess] that the two natures are parts of that [human being], being only soul and flesh.<sup>10</sup>

The second, or ‘subsistence’ theory, posits that the union between the second person of the Trinity and the body and soul of man is not so close as to be a union or a substance (as in the first theory), but a ‘composition’ (*compositus*), such that Christ is two natures (divine and human) which ‘subsist’ (*subsistere*), or lie beneath, the three ‘substances’ (divinity, body, and soul), and not just body and soul. This composed person does not become a ‘person’, however, and therefore arguably is not an *aliquid*. In the Lombard’s words:

There are, however, others as well, who agree partly with those [defenders of the first theory], but who say that human being consists not only of a rational soul and of flesh, but of a human and divine nature, that is of three substances: divinity, flesh, and soul. This [human being] they confess to be Christ, and [they further confess] that He is only one person, who was simple only before the Incarnation, but in the Incarnation became to be composed of divinity and humanity.<sup>11</sup>

<sup>10</sup> ‘Alii enim dicunt in ipsa Verbi incarnatione hominem quendam ex anima rationali et humana carne constitutum: ex quibus duobus omnis verus homo constituitur. Et ille homo coepit esse Deus, non quidem natura Dei, sed persona Verbi [...] Non tamen demigratione naturae in naturam, sed utriusque naturae servata proprietate, factum est ut Deus esset illa substantia, et illa substantia esset Deus [...] Cumque dicant illum hominem ex anima rationali et humana carne subsistere, non tamen fatentur ex duabus naturis esse compositum, divina scilicet et humana; nec illius partes esse duas naturas, sed animam tantum et carnem’: Peter Lombard, *Sententiae*, 3, d. 6, c. 2, in *Sententiae in IV libris distinctae*, ed. by Ignatius C. Brady, 3rd rev. edn, 2 vols (Grottaferrata: Collegium S. Bonaventurae, 1971–81), I, p. 50, trans. by Rosemann, *Peter Lombard*, p. 128.

<sup>11</sup> ‘Sunt autem et alii, qui istis in parte consentiunt, sed dicunt hominem illum non ex anima rationali et carne tantum, sed ex humana et divina natura, id est ex tribus substantiis:

The third, or '*habitus*' theory, rejects the idea that Christ as man was a composed person (as per the second theory), and refuses to concede that an *assumptus homo*, composed of body and soul, could be assumed by the Word in a manner such that it constitutes with the Word a substance or a unique person (as in the first theory). Following from this, the union between the second person of the Trinity and the body and soul of man is not deemed close enough to be a union, or a substance, or even a composition, but is *secundum habitus*, one of the nine attributes from Aristotle's Categories, akin to a 'having' or a 'wearing'. Thus, the Word, in taking on the soul and body, simply cloaks itself as a garment in order to manifest Himself to the eyes of men, so that God is 'essentially' (*essentialiter*), but not truly, man. As the Lombard puts it:

There are others, too, who deny not only that in the Incarnation of the Word a person was composed of natures, but also disavow that some true human being, or even some substance, was composed or made of soul and flesh here; but they say that these two — namely, soul and flesh — were united to the person or nature of the Word not in such a manner that from these two or from these three some substance or person was made or composed, but that the Word of God was clothed in these two as though in a garment so as to appear fittingly to the eyes of mortals.<sup>12</sup>

The second and third theories of Peter Lombard, therefore, by appearing to deny that God as man was *aliquid*, have been seen as promoting the so-called notion of 'Christological Nihilianism', which, in the twelfth century, as Häring has explained, suggested that Christ's human nature was not a substance.<sup>13</sup>

divinitate, carne et anima, constare; hunc Christum fatentur, et unam personam tantum esse, ante incarnationem vero solummodo simplicem, sed in incarnatione factam compositam ex divinitate et humanitate': Peter Lombard, *Sententiae*, 3, d. 6, c. 3, in *Sententiae in IV libris distinctae*, ed. by Brady, I, p. 52; trans. by Rosemann, *Peter Lombard*, p. 129.

<sup>12</sup> 'Sunt etiam et alii, qui in incarnatione Verbi non solum personam ex naturis compositam negant, verum etiam hominem aliquem, sive etiam aliquam substantiam, ibi ex anima et carne compositam vel factam diffitentur; sed sic illa duo, scilicet animam et carnem, Verbi personae vel naturae unita esse aiunt, ut non ex illis duobus vel ex his tribus aliqua substantia vel persona fieret sive componeretur, sed illis duobus velut indumento Verbum Dei vestiretur ut mortalium oculis congrueretur appareret': Peter Lombard, *Sententiae*, 3, d. 6, c. 4, in *Sententiae in IV libris distinctae*, ed. by Brady, I, p. 55; trans. by Rosemann, *Peter Lombard*, p. 129.

<sup>13</sup> As Studeny and others have argued. See Robert F. Studeny, *John of Cornwall: An Opponent of Nihilianism: A Study of the Christological Controversy of the Twelfth Century* (Vienna: St Gabriel's Mission Press, 1939), p. 243. Häring noted that the phrase 'Christ as man is not something' (*Christus quod homo non est aliquid*) did not have the meaning that 'Christ as man is *nothing*' (*nihil*), but merely that Christ as man had human nature but was not a

## The Subsistence Theory

Gilbert of Poitiers (1085/1090–1154) has traditionally been linked to the second, or subsistence theory,<sup>14</sup> even though he did not — like others associated with this theory — speak of three substances or use the expression *persona composita*.<sup>15</sup> In addition, two Porretan sentence collections dating to the early 1140s, which purported to summarize and collate Gilbert's teaching between c. 1137–42,<sup>16</sup> were, more clearly than Gilbert, proponents of this second theory.<sup>17</sup> The anonymous author of *Sententiae divinitatis* was another author of such Porretan affiliation.<sup>18</sup>

## The *Habitus* Theory

Peter Abelard (1079–1142/1144) has been linked with the third of Peter Lombard's positions, the *habitus* theory, and its origins can be found in his writings.<sup>19</sup> Abelard's followers have been seen as the staunchest contemporary defenders of the *habitus* doctrine, and include the anonymous author of

human person: Häring, 'The Case of Gilbert', pp. 35–36, n. 84. Whether this was Vacarius's understanding of the dissenters' views will be examined below.

<sup>14</sup> Michael B. Raschko, 'Aquinas's Theory of the Incarnation in Light of the Lombard's Subsistence Theory', *The Thomist*, 65 (2001), 409–39 (p. 417).

<sup>15</sup> Häring, 'The Case of Gilbert', pp. 32–33; Colish, *Peter Lombard*, 1, p. 406.

<sup>16</sup> *Sententiae*, in 'Die "Sententie magistri Gisliberti Pictaviensis episcopi": I', ed. by Nikolaus M. Häring, *Archives d'histoire doctrinale et littéraire du moyen âge*, 45 (1978), 83–180, and 'Die "Sententie magistri Gisliberti Pictaviensis episcopi": II', ed. by Nikolaus M. Häring, *Archives d'histoire doctrinale et littéraire du moyen âge*, 46 (1979), 45–105.

<sup>17</sup> Colish, *Peter Lombard*, 1, p. 408.

<sup>18</sup> *Sententiae divinitatis*, in *Die Sententiae Divinitatis: Ein Sentenzenbuch der Gilbertischen Schule*, ed. by Bernhard Geyer, Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters, 7, Heft 2–3 (Münster: Aschendorff, 1909), pp. 75, 94–99, 103–04; Nielsen, *Theology and Philosophy*, p. 121, n. 22; Colish, *Peter Lombard*, 1, pp. 56, 141, 416.

<sup>19</sup> Peter Abelard, *Sermo* 1, 2, in PL: 178, cols 385D–86A, 396A. For Abelard's Christology, see the bibliography in Colish, *Peter Lombard*, 1, p. 409, n. 9, and Marcia L. Colish, 'Christological Nihilianism in the Second Half of the Twelfth Century', *Recherches de théologie ancienne et médiévale*, 63 (1996), 146–55 (p. 149, n. 6); cf. Luscombe, *The School of Peter Abelard*, p. 272. Like Colish, I use the term 'nihilianism', as designating a 'lack of substance or person'; the cognate word 'nihilism', in contrast, denotes 'nothing at all'.

*Sententiae magistri Petri Abaelardi*<sup>20</sup> (composed before c. 1140) and Roland of Bologna, who wrote his *Sententiae* in c. 1150.<sup>21</sup> Other works which can be seen to follow Abelard<sup>22</sup> include the *Commentarius Cantabrigdensis*,<sup>23</sup> the *Sententiae Florianenses* (written before 1140/1141),<sup>24</sup> the *Sententiae Parisienses Priores* (written before 1136–40/1141),<sup>25</sup> and Odo's *Ysagoge in theologiam* (written c. 1148).<sup>26</sup>

<sup>20</sup> *Sententiae magistri Petri Abaelardi*, ed. by Sandro Buzzetti, Pubblicazioni della Facoltà di lettere e filosofia dell'Università di Milano, 101, sezione cura di storia di filosofia, 31 (Florence: Nuova Italia, 1983), p. 109; see also *Sententiae magistri Petri Abaelardi*, in PL: 178, cols 1685–1759; Nielsen, *Theology and Philosophy*, p. 223, n. 1. Mews has argued that the so-called Master Hermannus is a chimera, and that the text attributed to that master is part of the *Sententiae* of Abelard, such as the *Sententiae Florianenses* and *Parisienses*: Constant J. Mews, 'The *Sententiae* of Peter Abelard', *Recherches de théologie ancienne et médiévale*, 63 (1986), 130–84. Colish, however, continues to refer to the text as that of Master Hermannus: Colish, *Peter Lombard*, I, pp. 410–11; Colish, 'Christological Nihilianism', p. 149, n. 6.

<sup>21</sup> Roland of Bologna, *Sententiae*, in *Die Sentenzen Rolands*, ed. by Ambrosius M. Gietl (Freiburg im Breisgau: Herder, 1891; repr. Amsterdam: Rodopi, 1969), pp. 164–65, 172–74, 191, 292, 305. As the title to Gietl's edition indicates, he mistakenly identified the author of the manuscript — Roland of Bologna — with Rolandus Bandinelli (the future Pope Alexander III). As a result, it has frequently been alleged by scholars that Alexander was a christological nihilianist before his ascendance to the seat of St Peter, when his decretals of 1170 and 1177 took the opposite view. That the arguments in Roland's *Sententiae* could not be identified with Rolandus Bandinelli/Alexander III has been demonstrated by John T. Noonan, 'Who was Rolandus?', in *Law, Church, and Society: Essays in Honor of Stephan Kuttner*, ed. by Kenneth Pennington and Robert Somerville (Philadelphia: University of Pennsylvania Press, 1977), pp. 21–48. Roland's *Sententiae* expressed several opinions contrary to the *habitus* theory: Roland of Bologna, *Sententiae*, in *Die Sentenzen Rolands*, ed. by Gietl, pp. 174, 179, 180, and 193; cf. Häring, 'The Case of Gilbert', p. 36; Nielsen, *Theology and Philosophy*, pp. 236–39. See also Colish, *Peter Lombard*, I, p. 410, n. 14, and Colish, 'Christological Nihilianism', p. 149, n. 6.

<sup>22</sup> Colish, 'Christological Nihilianism', p. 223, n. 1.

<sup>23</sup> *Commentarius Cantabrigiensis in epistolas Pauli e schola Petri Abaelardi*, ed. by Artur Michael Landgraf, Publications in Medieval Studies, 2, 4 vols (Notre Dame, IN: University of Notre Dame Press, 1937–45).

<sup>24</sup> *Sententiae Florianenses*, ed. by H. Ostlender, Florilegium patristicum, 19 (Bonn: P. Hanstein, 1929).

<sup>25</sup> *Sententiae Parisienses priores*, in *Écrits théologiques de l'école d'Abélard*, ed. by Artur Michael Landgraf, Études et documents, 14 (Louvain: Univ. Catholique de Louvain, 1934), pp. 3–60.

<sup>26</sup> Odo, *Ysagoge in theologiam*, in *Écrits théologiques*, ed. by Landgraf, pp. 63–285. For debates on the dating of the work, see Nielsen, *Theology and Philosophy*, p. 223, n. 1.

Much debate has ensued over whether the Lombard himself identified with the *habitus* doctrine.<sup>27</sup> Certainly, many twelfth-century writers identified the Lombard with the error of Christological Nihilianism and the *habitus* doctrine.<sup>28</sup> This view is supported on a reading of the *Sentences*, in which Peter deliberately leaves open the question as to which of the three theories is in accordance with orthodoxy, and fails to explicitly condemn the *habitus* doctrine.<sup>29</sup> His commentary on Philippians 2. 1–8 appears to support the *habitus* theory,<sup>30</sup> but

<sup>27</sup> See the bibliography in Colish, *Peter Lombard*, 1, p. 427, n. 53 and n. 54.

<sup>28</sup> Gerhoch of Reichersberg, John of Cornwall, and Walter of St Victor, amongst others, labelled Peter a 'nihilianist', and a proponent of the *habitus* theory: Gerhoch of Reichersberg, *Liber de gloria et honore filii hominis*, 7, 3, in PL: 194, col. 1097B; John of Cornwall, *Eulogium ad Alexandrum Papam*, in 'The "Eulogium ad Alexandrum Papam Tertium" of John of Cornwall', ed. by Nikolaus M. Häring, *Mediaeval Studies*, 13 (1951), 253–300 (pp. 265–56, 280, in which John attributes the *habitus* theory as the Lombard's 'personal opinion' rather than an 'assertion of faith'); Walter of St Victor, *Contra quatuor labyrinthos Franciae*, 3, 1–2, in 'Le Contra Quatuor Labyrinthos Franciae de Gauthier de Saint-Victor. Édition Critique', ed. by Pierre Glorieux, *Archives d'histoire doctrinale et littéraire du moyen âge*, 19 (1953), 187–335 (pp. 246–49). See Häring, 'The Case of Gilbert', p. 34; Colish, *Peter Lombard*, 1, pp. 428–35; Jean Châtillon, 'Latran III et l'enseignement christologique de Pierre Lombard', in *Le troisième Concile de Latran (1179): sa place dans l'histoire*, ed. by Jean Longère (Paris: Etudes Augustiniennes, 1982), pp. 77–90 (pp. 78–80); Richard Cross, *The Metaphysics of the Incarnation: Thomas Aquinas to Duns Scotus* (Oxford: Oxford University Press, 2002), p. 241; Rosemann, *Peter Lombard*, p. 130.

<sup>29</sup> Nielsen argues that the Lombard's presentation of the second theory is premised on his personal grounding in ontology fundamental to the third, or *habitus*, theory. Further, he points to the lack of any counter-arguments by the Lombard to the third theory: Nielsen, *Theology and Philosophy*, pp. 262–64. This builds on Glorieux's argument that Peter's disproportionately lengthy account of the second theory pointed towards his support for that position: Pierre Glorieux, 'L'orthodoxie de III Sentences (d. 6, 7 et 10)', in *Miscellanea Lombardica: pubblicata a chiusura delle celebrazioni centenarie organizzate in Novara per onorare Pietro Lombardo* (Novara: Istituto Geografico de Agostini, 1957), pp. 137–47 (p. 145). Of course, as Colish rightly points out, the Lombard makes no explicit statement in support of the third theory in his *Sentences*: Marcia L. Colish, 'Gilbert, the Early Porretans, and Peter Lombard: Semantics and Theology', in *Gilbert de Poitiers et ses contemporains: aux origines de la 'logica modernorum'*. *Actes du septième symposium européen d'histoire de la logique et de la sémantique médiévales, Poitiers 17–22 juin 1985*, ed. by Jean Jolivet and Alain de Libera, Centre d'Études Supérieures de Civilisation Médiévale de Poitiers (Naples: Bibliopolis, 1987), pp. 229–50 (p. 247).

<sup>30</sup> Peter Lombard, *In Epistolam S. Pauli ad Philippenses*, 2. 1–8, in PL: 192, cols 231D–235D. But Colish notes Peter's position is qualified by his emphasis on the full reality and unchanged character of Christ's divinity: Colish, 'Christological Nihilianism', p. 148.

evidence of his oral teaching supports both views.<sup>31</sup> Colish has steadfastly argued that the Lombard did not fall into the error of Christological Nihilianism as it manifested itself in the *habitus* position.<sup>32</sup> She points to the Lombard's followers, suggesting that they paint a more complex picture of their master's teaching.<sup>33</sup> While Stephen Langton (c. 1165–1228) and Peter the Chanter (c. 1130–1197), the latter in his *Summa de sacramentis*, rejected the *habitus* position,<sup>34</sup> several others defended the *habitus* theory, including: Master Bandinus, in his *Sententiae* (composed after 1155);<sup>35</sup> Gandulph of Bologna, in his *Sententiarum libri quattuor*

<sup>31</sup> Accounts of Peter's oral teaching by his students, Peter Comester, Odo of Ourscamp, and Adam of St Asaph, confirm that Peter did not fall into the error of nihilianism: Colish, 'Christological Nihilianism', p. 147. This conflicts with the accounts of John of Cornwall, Gerhoch, and Walter, above, as well as another student (possibly Peter Comestor, also 'Manducator'): Rosemann, *Peter Lombard*, pp. 132–33, n. 36, citing a text in Artur Michael Landgraf, *Dogmengeschichte der Frühscholastik*, 4 vols in 8 (Regensburg: Pustet, 1952–56), II in I, p. 126, n. 48. On the identification of the student as the Manducator, see Ignatius C. Brady, 'Peter Manducator and the Oral Teachings of Peter Lombard', *Antonianum*, 41 (1966), 454–90.

<sup>32</sup> According to Colish, the *habitus* position was untenable for the Lombard because it made Christ's manhood accidental: Colish, *Peter Lombard*, I, p. 404.

<sup>33</sup> Peter's christological views were 'mis-perceived' due to some early followers, such as Bandinus, Gandulph of Bologna, and Peter of Poitiers, 'mistakenly' propounding nihilianism, while others, such as Stephen Langton and Peter the Chanter, did not: Colish, 'Christological Nihilianism', p. 148. Colish argues that, up to 1180, the followers of the Lombard were not a homogenous group. This is in contrast to Nielsen, who believes that the Lombardian school taught a common doctrine based on their master's alleged position up to 1180: Nielsen, *Theology and Philosophy*, pp. 264–70, 279–361; Lauge Olaf Nielsen, 'Logic and the Hypostatic Union: Two Late Twelfth-Century Responses to the Papal Condemnation of 1177', in *Medieval Analyses in Language and Cognition*, ed. by Sten Ebbesen and Russell L. Friedman, Historisk-filosofisk meddelelser, 77 (Copenhagen: Munksgaard, 1999), pp. 251–79 (p. 252).

<sup>34</sup> Stephen Langton, *Commentarius in Sententias*, 3 d.6 c.4, d.10 c. 1, in *Der Sentenzenkommentar des Kardinals Stephan Langton*, ed. by Artur Michael Landgraf, Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters, 37, Heft 1 (Münster: Aschendorff, 1952), pp. 112, 116; Peter the Chanter, *Summa de sacramentis et animae consiliis*, ed. by Jean-Albert Dugauquier, 3 vols (Louvain: Nauwelaerts, 1954–67), ch. 54, c.1: III, pp. 470–86; c. 2: III, pp. 486–90; c. 3: III, p. 492. See Colish, 'Christological Nihilianism', pp. 153–54.

<sup>35</sup> Bandinus, *Summa Sententiarum libri quattuor*; in PL: 192, cols 971–1112, 1073BC, 1074BC, 1075A; Nielsen, *Theology and Philosophy*, pp. 280, 287–89, 292; Colish, 'Christological Nihilianism', pp. 149–50.



(written 1160–70);<sup>36</sup> Peter of Poitiers, in his *Libri Sententiarum quinque* (written before 1170);<sup>37</sup> the anonymous author of the *Summa 'Breves dies hominis'* (the christological section of which is dateable to before 1170);<sup>38</sup> Peter Comestor (or Manducator) (who died in 1178);<sup>39</sup> Odo of Ourscamp;<sup>40</sup> the author of the pseudo-Poitiers glosses on the Lombard's sentences (dating to 1160–65);<sup>41</sup> Master Udo, in his *Sententiae* (c. 1160–65);<sup>42</sup> the author of an abbreviation of Peter of Poitiers's *Sentences*, called the *Opinio Parisiensium* (which dates to after 1177);<sup>43</sup> the anonymous author of the so-called *Quaestiones de homine assumpto*,<sup>44</sup> and the letter written by the anonymous theological student from Paris, known as 'E', to his equally anonymous former teacher 'P' (dating from 1160–65).<sup>45</sup> Simon of

<sup>36</sup> Gandulph of Bologna, *Sententiarum libri quattuor*, in *Magistri Gandulphi Bononiensis Sententiarum Libri Quattuor*, ed. by J. W. von Walter (Vienna: Haim, 1924). Although he did not use the term *habitus* in his writings, Gandulph treated the human nature in Christ as accidental, and thus has been labelled a *habitus* theorist: *Sententiarum*, 3. 7–8, 3. 13, 3. 15–20, in *Magistri Gandulphi Bononiensis Sententiarum*, ed. by von Walter, pp. 280–81, 285–86, 287–88; Colish, 'Christological Nihilianism', p. 150; Nielsen, *Theology and Philosophy*, p. 281.

<sup>37</sup> Peter of Poitiers, *Sententiae libri quinque*, 4. 10, in PL: 211, cols 1176B–C. See Colish, *Peter Lombard*, I, p. 436, n. 77; Colish, 'Christological Nihilianism', p. 151; Nielsen, *Theology and Philosophy*, pp. 279–361. See also the introduction to *Sententiae Petri Pictaviensis*, ed. by Philip S. Moore, Marthe Dulong, and Joseph Garvin (Notre Dame, IN: University of Notre Dame Press, 1961), pp. xliii–xliv.

<sup>38</sup> Nielsen, *Theology and Philosophy*, pp. 281–82, nn. 14, 15.

<sup>39</sup> Peter Comestor's views appear in an unpublished manuscript, mentioned by Brady, 'Peter Manducator', p. 473; Colish, *Peter Lombard*, I, p. 424.

<sup>40</sup> Master Odo's views are cited from two manuscripts of his *Quaestiones*, which appear in 'Der Magister Petrus episcopus', ed. by Artur Michael Landgraf, *Recherches de théologie ancienne et médiévale*, 8 (1936), 198–203 (p. 201, n. 14), and 'Der Einfluss des mündlichen Unterrichts auf theologische Werke der Frühscholastik', ed. by Artur Michael Landgraf, *Collectanea Franciscana*, 23 (1953), 285–90 (p. 286). See also Colish, *Peter Lombard*, I, p. 424.

<sup>41</sup> Nielsen, *Theology and Philosophy*, p. 280.

<sup>42</sup> Ibid., p. 280; Principe, *William of Auxerre's Theology*, p. 200, n. 48.

<sup>43</sup> *Opinio Parisiensium*, contained in London, Lambeth Palace, Cod. 142, and cited in Nielsen, *Theology and Philosophy*, p. 283.

<sup>44</sup> *Quaestiones de homine assumpto*, contained in Paris, Bibliothèque nationale, Cod. Lat. 3477, and cited in Nielsen, *Theology and Philosophy*, p. 283.

<sup>45</sup> Barth, 'Ein neues Dokument'.

Tournai (fl. c. 1165–1201) also supported the *habitus* theory in his *Institutiones in sacram paginam*, despite not being recognized as a Lombardian follower.<sup>46</sup>

### The *Assumptus homo* Position

A large number of thinkers can broadly be identified as representative of the *assumptus homo* position in the context of conciliar and church debates on the theology of Christ between the 1140s and late 1170s.<sup>47</sup> This group encompassed both the monastic and scholastic spheres, and differed in their approaches to the issue of the hypostatic union. Hugh of St Victor (c. 1096–1141/1142) stands as a central figure in the doctrinal outlook of the *assumptus homo* theorists. In his *De sacramentis Christianae fidei* (which dates from 1137), Hugh countered what he considers Abelard's view, namely that the Word assumed not a person, but a nature.<sup>48</sup> In his mind, Abelard's view seemed to suggest that the Word and man were 'parts' of a whole that constituted Christ, his so-called 'theory of parts'.<sup>49</sup> Instead, Hugh held that the Word simultaneously assumed both the soul and the body of the *assumptus homo*, which, together, constitute a human person; but the body and soul that Christ assumed were not mutually combined before they were united with Christ, and therefore did not constitute a human person until the very moment of the incarnation.<sup>50</sup> Thus, Hugh adopted Abelard's

<sup>46</sup> Simon of Tournai, *Institutiones in sacram paginam*, 7. q.19–26, 72–73, in *Die "Institutiones in sacram paginam" des Simon von Tournai*, ed. by Richard Heinzemann (Munich: Schönigh, 1967); see also *Les "Disputationes" de Simon de Tournai*, ed. by Joseph Warichez (Louvain: Spicilegium Sacrum Lovaniense, 1932), 17, q. 3, d. 56, q. 1–4, d. 81, q. 3; pp. 58–59, 158–62, 237; Colish, 'Christological Nihilianism', p. 152.

<sup>47</sup> For the following, see Häring, 'The Case of Gilbert', pp. 37–38; Châtillon, 'Latran III', pp. 78–83; Nielsen, 'Logic and the Hypostatic Union', pp. 251–79.

<sup>48</sup> Nielsen noted that there is debate as to whether the first argument formed a part of Abelard's theology: *Theology and Philosophy*, p. 229.

<sup>49</sup> Peter Abelard, *Theologia christianii*, in PL: 178, col. 1274A. Similar ideas appeared in the writings which stemmed from Abelard's 'school', both before 1140, in the anonymous *Sententie magistri Petri Abaelardi* [PL: 178, col. 1733B], and after 1140, in Roland of Bologna's *Sententiae* [in *Die Sentenzen Rolands*, ed. by Gietl, p. 177].

<sup>50</sup> Hugh of St Victor, *De sacramentis Christianae fidei*, in PL: 176, cols 173C–618B, 394A, 395B, 402B (Book 2, 8). For accounts of Hugh's christology, see Colish, *Peter Lombard*, I, pp. 57–63, 412–15; Luscombe, *The School of Peter Abelard*, p. 192; Roger Baron, *Science et sagesse chez Hugues de Saint-Victor* (Paris: Lethielleux, 1957), pp. 139ff; Nielsen, *Philosophy and Theology*, pp. 193–213; Häring, 'The Case of Gilbert', pp. 29–30.

Platonizing tendencies, while avoiding charges of Adoptionism. Hugh's ideas are closely followed in the anonymously composed *Summa sententiarum* (c. 1138–42), which, along with Hugh,<sup>51</sup> argues against Abelard's 'theory of parts'.<sup>52</sup> Because of Hugh's central role, this position is often referred to as 'Victorine'.

This Victorine position was taken up with particular force by some prominent English theologians. Robert Pullen (c. 1080–1146), a native Englishman educated in Paris, also argues against Abelard's notion of 'Christ as parts', with a somewhat more developed terminology in his lengthy *Sententiarum libri octo* (composed 1142 to 1144).<sup>53</sup> Robert of Melun (d. 1167), like Robert Pullen a native Englishman educated on the Continent, was a well-known supporter of the *assumptus homo* position.<sup>54</sup> The second (unedited) book of Robert's *Sententiae* (1152–60) sets out his views on christology.<sup>55</sup> An abbreviation of this book, the

<sup>51</sup> *Summa sententiarum*, in PL: 176, cols 42–174. There is some conjecture as to whether this text was written by Hugh of St Victor, and, also whether it was written before or after Hugh's *De sacramentis*: Nielsen, *Theology and Philosophy*, p. 196, n. 13. On the *Summa sententiarum*, see Colish, *Peter Lombard*, I, pp. 63–65, 115–19; Heinrich Weisweiler, 'La "Summa Sententiarum" source de Pierre Lombard', *Recherches de théologie ancienne et médiévale*, 6 (1934), 143–83; *L'Eresia di Ugo Speroni nella confutazione del maestro Vacario: Testo inedito del secolo XII con studio storico e dottrinale*, ed. by Ilarino Da Milano, Studi e Testi, 115 (Vatican City: Biblioteca Apostolica Vaticana, 1945), p. 300, n. 1; F. Gastaldelli, 'La *Summa sententiarum* di Otto di Lucca: conclusione di un dibattito secolare', *Salesianum*, 42 (1980), 537–46; Luscombe, *The School of Peter Abelard*, pp. 198–212; Nielsen, *Theology and Philosophy*, p. 229. Although the *Summa sententiarum* has traditionally been seen as an attempt to synthesize the Abelardian and Victorine schools, Luscombe has argued that it was more opposed to Abelard than to Hugh: *The School of Peter Abelard*, p. 212.

<sup>52</sup> *Summa sententiarum*, in PL: 176, cols 42–174, 77D–78A.

<sup>53</sup> Robert Pullen, *Sententiarum libri octo*, in PL: 186, cols 639–1211, 782D–788D, 789C. See F. Courtney, *Cardinal Robert Pullen: An English Theologian of the Twelfth Century* (Rome: Universitas Gregoriana, 1954), pp. 22–32, 186–90; Colish, *Peter Lombard*, I, pp. 416–17, 422, 437, 441–42, 445, 449; Nielsen, *Theology and Philosophy*, pp. 234–35, n. 19.

<sup>54</sup> See Martin's introduction to *Oeuvres de Robert de Melun*, ed. by Raymond M. Martin and R. M. Gallet, Spicilegium Sacrum Lovaniense, Études et documents, fasc. 13, 18, 21, 25; 3 vols in 4 (Louvain: Spicilegium Sacrum Lovaniense, 1932–52), III, pp. vi–xii.

<sup>55</sup> Martin's edition of the *Sententiae* only goes as far as Book 1, Part 6: Robert of Melun, *Sententiae*, in *Oeuvres de Robert de Melun*, ed. by Martin and Gallet, III [Book 1, parts 1–2], and *Oeuvres de Robert de Melun*, ed. by Martin and Gallet, IV, (Book 1, parts 2(cont.)–6). The date for the *Sententiae* is 1152–60, according to Martin, in *Oeuvres de Robert de Melun*, ed. by Martin and Gallet, III, p. vi. In contrast, a date of 1155/1156–1163/1164 is given by Ulrich Horst, *Die Trinitäts- und Gotteslehre des Robert von Melun*, Walberberger Studien der Albertus-Magnus-Akademie, 2 vols (Mainz: Matthias-Grünwald Verl., 1964), I, pp. 20–23. For accounts of

*Libri secundae summae abbreviato*, has been attributed to Robert by Anders, although Martin thought instead that the author was a pupil of Robert's.<sup>56</sup> Two anonymous texts, the *Allegoriae super Vetus et Novum Testamentum* (dating from the second half of the twelfth century)<sup>57</sup> and the *Apologia de verbo incarnato* (from c. 1160)<sup>58</sup> also align themselves with the *assumptus homo* theory.<sup>59</sup> The significant borrowing of the *Apologia* from Robert of Melun make the work a likely 'product' of that master's school.<sup>60</sup>

From the early 1160s a number of masters from the abbey of St Victor supported the view of Robert of Melun and the *assumptus homo* position. Figures such as Richard of St Victor (d. 1173), who in the 1150s and 1160s composed his

Robert's christology generally, see Colish, *Peter Lombard*, I, p. 412, n. 21; pp. 415–16, 458–59; Luscombe, *The School of Peter Abelard*, pp. 293–94; Häring, 'The Case of Gilbert', p. 30, n. 46; p. 31.

<sup>56</sup> Anders has edited an 'abbreviation' of Book 2: Robert of Melun, *Libri secundae summae abbreviatio*, in *Die Christologie des Robert von Melun*, ed. by F. Anders, *Forschungen zur Christlichen Literatur- und Dogmengeschichte*, 15/5 (Paderborn: Schöningh, 1927), pp. 1–130 (hereafter cited as *Abbreviatio*). That the *Abbreviatio* is an abbreviation, rather than another edition of Robert's *Sententiae*, is established by Raymond-M. Martin, 'Un texte intéressant de Robert de Melun (*Sententiae* Libr. II Part 2, Cap. cxvii–ccxiii)', *Revue d'histoire ecclésiastique*, 28 (1932), 313–29. Martin disputed Anders' claim that the *Abbreviatio* was, in fact, Robert's work, arguing that it contained subject matter not in MS St Omer 121 ('the most-developed manuscript of the *Sententiae*'): *Oeuvres de Robert de Melun*, ed. by Martin and Gallet, I, pp. xiii–xiv. Martin believed that the shorter work was by a disciple of Robert's: Raymond-M. Martin, 'L'Oeuvre théologique de Robert de Melun', *Revue d'histoire ecclésiastique*, 15 (1920), 464–77 (p. 474). Nielsen, conceding that it may have been written by a disciple, views the *Abbreviatio* as representative of Robert's christology. Nevertheless, he overcomes Martin's concern for the differences in the manuscripts by citing both MS St Omer 121 and Anders' edition. Colish relies on the comprehensive list of *capitula* Robert sets out in MS St Omer 121, which Martin has edited, imputing his christological plan from there: Colish, *Peter Lombard*, II, pp. 73–74.

<sup>57</sup> *Allegoriae (super Vetus et Novum Testamentum)*, in PL: 175, cols 751–923; 'Die *Questiones super Epistolas S. Pauli* und die *Allegoriae*', ed. by Artur Michael Landgraf, *Collectanea Franciscana*, 16 (1946), 186–200. See Häring, 'The Case of Gilbert', p. 32.

<sup>58</sup> *Apologia de verbo incarnato*, in PL: 177, cols 295–324; see also 'The So-called *Apologia de verbo incarnato*', ed. by Nikolaus M. Häring, *Franciscan Studies*, 16 (1956), 102–43 (pp. 110–43). For its date, see 'The So-called *Apologia*', ed. by Häring, p. 108.

<sup>59</sup> Nielsen, *Theology and Philosophy*, p. 204, n. 57.

<sup>60</sup> 'The So-called *Apologia*', ed. by Häring, p. 105.

*Liber de Verbo incarnato*,<sup>61</sup> and Achard of St Victor (d. 1171) — another Englishman who was educated in the Paris schools, albeit the monastic school of St Victor of which he became abbot in 1165 — in his *Sermones* (composed before 1160), typify this orthodox, if more monastic and mystical, approach.<sup>62</sup> Achard later received a mention in John of Cornwall's *Eulogium* as an adherent to the *assumptus homo* position, and as a prime agitator in urging the pope to condemn Christological Nihilianism.<sup>63</sup>

### Conciliar Debates in the 1140s and 1170s

The *assumptus homo* theorists came to establish their position as 'orthodox', but this was only achieved through arguments ground out in conciliar debates between the late 1140s and 1170s. At a consistory at Paris, in 1147, Gilbert of Poitiers was accused of putting forward errors regarding the union of the human nature in Christ.<sup>64</sup> His commentaries on Boethius, composed in the period

<sup>61</sup> Richard of St Victor, *Liber de verbo incarnato*; in PL: 196, cols 1004B–1010D, 9–15. For accounts of Richard's christological stance, see Steven Chase, *Angelic Wisdom: The Cherubim and the Grace of Contemplation in Richard of St Victor*, Studies in Spirituality, 2 (Notre Dame, IN: University of Notre Dame Press, 1995), pp. 105, 107; B. Hauréau, *Histoire de la philosophie scholastique*, 2 vols (Paris: Durand et Pedone-Lauriel, 1872–1880), 1, p. 513; T. Heitz, *Essai historique sur les rapports entre la philosophie et la foi de Bérengar de Tours à S. Thomas d'Aquin* (Paris: Le Coffre, 1909); Paul Vignaux, *La Pensée au moyen âge* (Paris: Colin, 1938), p. 61; Martin Grabmann, *Die Geschichte der scholastischen Methode: nach den gedruckten und ungedruckten Quellen* (Berlin: Akademie Verl., 1988), pp. 310, 315; Bernhard Geyer, *Die patristische und scholastische Philosophie*, Grundriss der Geschichte der Philosophie, 2 (Berlin: Mettler, 1927), p. 267.

<sup>62</sup> Achard of St Victor, *Sermo I in natali Domini*, in *Achard de Saint-Victor: Sermones inédits*, ed. by Jean Châtillon, Textes philosophiques du moyen âge, 17 (Paris: Vrin, 1970), pp. 24–35, and *Sermo 4 de reurrectione*, in *Sermones inédits*, ed. by Châtillon, pp. 54–65. For treatments of Achard's christology, see Jean Châtillon, 'Achard de Saint-Victor et les controverses christologiques du XII<sup>e</sup> siècle', in *Mélanges offerts au R. P. Cavallera* (Toulouse: Bibliothèque de l'Institut Catholique, 1948), pp. 317–37; Jean Châtillon, *Theologie, spiritualité et métaphysique dans l'œuvre oratoire d'Achard de Saint-Victor* (Paris: Vrin, 1969), pp. 183–216; *Sermones inédits*, ed. by Châtillon, introduction. See also *Achard of St Victor. Works*, trans. by Hugh Feiss, Cistercian Studies Series, 165 (Kalamazoo, MI: Cistercian Publications, 2001).

<sup>63</sup> John of Cornwall, *Eulogium*, in 'The "Eulogium"', ed. by Häring, p. 267.

<sup>64</sup> Adam of Parvipontus (Petit-Pont), a student of Gilbert's, and Hugh of Champfleury, stood as accusers of the bishop of Poitiers: Otto of Freising, *Gesta Friderici Imperatoris*, ed. by Georg Waitz and B. von Simson, MGH, *Scriptores rerum Germanicarum in usum scholarum*

spanning 1135–42,<sup>65</sup> were innovative for their application of the ontological notion of ‘form’ to describe the hypostatic union. Gilbert observed the Boethian-Aristotelian distinction between the concrete material object or reality (*id quod*), or person (*is qui*), and the cause of that reality (*id quo*). Specifically, Gilbert held that the form (*id quo*) by which something exists, such as divinity, is quite separate from that which it informs (*id quod*), namely the human person of Jesus. Gilbert argued that Christ is one ‘person’ (*is qui*), who is a ‘substance’ (*id quod*), with a twofold *id quo* (the divine essence, or divinity, and the human essence, or humanity); Christ’s human nature (or *Christus secundum quod homo*) is not a substance or *id quod*, but an *id quo*. Accordingly, he stated, Christ as man is not *aliquid*.<sup>66</sup>

Thus, Gilbert was identified with the ‘subsistence’ theory of christology, and Christological Nihilianism. Critics of Gilbert considered that his metaphysical distinction was blasphemous when applied to God, as it implied, on the one hand, that God was something different from his divinity, or, on the other, that Christ as man was different from his divinity.<sup>67</sup> Gilbert was again the subject of examination at the Council of Reims in March 1148, this time by Peter Lombard and Robert of Melun. Vacarius too may have been present at Reims at this time, since John of Salisbury recorded him visiting France in that year.<sup>68</sup> At the very least, John of Salisbury and Thomas Becket, who did attend, no doubt would have reported events to Vacarius and other members of Theobald’s household.<sup>69</sup>

A Council at Tours in 1163 took on particular significance in the aftermath of Peter Lombard’s death around 1160. Although many scholars attribute to this

separatim editi, 46 (Hanover: Hahn, 1912; repr. 1978), p. 75.

<sup>65</sup> Gilbert of Poitiers, *Commentarius in Boethi Opuscula Sacra*, ed. by Nikolaus M. Häring, Studies and Texts, 13 (Toronto: Pontifical Institute of Mediaeval Studies, 1966).

<sup>66</sup> ‘In eo [Christus] namque nihil est quod sit homo quod ei, qui in illo deus sit, intelligatur conjunctum’: Gilbert of Poitiers, *Contra Eutychen*, in PL: 64, cols 1383A, 1382D, 1383B–C. See also Häring, ‘The Case of Gilbert’, pp. 26, 32; Raschko, ‘Aquinas’s Theory’, p. 417.

<sup>67</sup> Constant J. Mews, ‘Accusations of Heresy in the Twelfth-century Schools: Gerhoch of Reichersberg and Otto of Freising on the Errors of Abelard and Gilbert of Poitiers’, a paper presented at the Histories of Heresy in Medieval and Early Modern Europe Conference, 7–9 July 2003, Queensland Art Gallery, Brisbane, Australia, pp. 1–15, which was kindly provided to me by the author.

<sup>68</sup> John of Salisbury, *Iohannis Saresberiensis Historia Pontificalis quae supersunt*, ed. by Reginald L. Poole (Oxford: Clarendon Press, 1927), p. 17.

<sup>69</sup> Massimiliano Guareschi, ‘Gli incontri di un canonico legista: Magister Vacarius teologo e polemista’, *Rivista di storia e letteratura religiosa*, 36 (2000), 381–414 (pp. 399–401).

council the condemnation of Peter Lombard's Christological Nihilianism, there is no solid evidence for this.<sup>70</sup> Certainly, Pope Alexander III considered two equally erroneous propositions: that Christ was not *aliquis homo* and that Christ as man was not an *aliquid*.<sup>71</sup> But the council did not make a decision on the orthodoxy of either of these propositions.<sup>72</sup>

In related developments, Gerhoch of Reichersberg (1092/1093–1169) despatched a letter to Alexander III in 1164 asking the pope to intervene in a christological debate in his home town in southern Germany.<sup>73</sup> Gerhoch, provost of Reichersberg, had been active in publicising his christological views since the 1140s.<sup>74</sup> He modelled himself on Rupert of Deutz (c. 1075/1080–1129), a Benedictine abbot who distrusted the scholastic masters at Laon and Paris. Writing to Pope Innocent II in 1141, Gerhoch recalled that, when visiting Rome in 1132, he had argued with a disciple of Abelard, who held that statements about Christ's divinity (for example, that Christ was a dwelling place for God) were essentially figurative expressions.<sup>75</sup> Later in 1141, he sent to Otto of Freising a treatise, now lost, called *De glorificatione Filii hominis*, directed against disciples of Peter Abelard, whom he claims were 'as numerous as locusts'.<sup>76</sup> It affirms that, in the glorification of Christ's humanity, insofar as Christ was man, He was *aliquid*. In 1146 he wrote his *Liber contra duas haereses*, in which he warned the pope of several new heresies threatening the Church, one of which sought to distinguish between the humanity and divinity of Christ. This work he directed against those 'dogmatising French masters', implicitly targeting Gilbert and Peter

<sup>70</sup> Häring noted that scholars have erroneously attributed to this council (a) the condemnation of Peter Lombard's views on the natures of Christ and (b) Alexander's condemnation of christological nihilism: Häring, 'The Case of Gilbert', p. 37, n.3.

<sup>71</sup> John of Cornwall, *Eulogium*, in 'The "Eulogium"', ed. by Häring, p. 257.

<sup>72</sup> 'Utra uero pars disputantium in pugna uerborum preualuerit, nescio': 'The "Eulogium"', ed. by Häring, p. 257.

<sup>73</sup> Gerhoch of Reichersberg, *Epistula* 17, in PL: 193, cols 565A–566B. This letter was one of five sent to Alexander III and his cardinals, attempting to obtain the condemnation of Folmar of Triefenstein. Châtillon believed the letter was dated January–February 1164, although he noted a suggestion for an earlier date of late 1163 (that is, winter 1163–64): 'Latran III', p. 80, n. 19.

<sup>74</sup> See Mews, 'Accusations of Heresy', p. 5.

<sup>75</sup> Gerhoch of Reichersberg, *Epistula* 21, in PL: 193, cols 576D–577A.

<sup>76</sup> '[N]unc exierunt locustae, uidelicet plures discipuli Petri Abailensis [...] Nos autem, quia Deum proprie hominem, et hominem Deum praedicamus': Gerhoch of Reichersberg, *Epistula* 21, in PL: 193, col. 585A.

Abelard.<sup>77</sup> In a treatise to the new pope, Hadrian IV, the *Liber de novitatibus huius temporis* (1154–59, c. 1156), he appealed to the pontiff to take action against the dialecticians ‘or rather heretics of our time’, above all ‘the many disciples of Peter Abelard [...] who claim that Christ is not God, except in a figurative sense’.<sup>78</sup> To say that Christ is anything less than fully divine, he saw as gross heresy.

Despite Gerhoch’s intervention in 1164, Alexander did not make a judgment in the matter, but requested that the parties remain with traditional Church doctrine.<sup>79</sup> Some months later, in December 1164 at Sens, at a large meeting of scholars, Pope Alexander III forbade all vain theological discussions and enjoined the Bishop of Paris to enforce this across all of France. At the same time, the pope approved a *sententia* relating to the glory of the ‘assumed humanity’, that is, the glory of Christ’s humanity, which recognized that Christ insofar as he was man was *aliquid*.<sup>80</sup> This language was reminiscent of that used by Gerhoch in his *De gloria et honore filii hominis*; it would seem that Gerhoch’s polemic had taken hold of the pontiff.<sup>81</sup>

<sup>77</sup> ‘Francigenarum magistrorum dogmatizantium contraria mihi’: Gerhoch of Reichersberg, *Liber contra duas hereses*, in PL: 194, cols 1161B–84, 1167D.

<sup>78</sup> ‘[V]idelicet plures discipuli Petri Abaiolardi, affirmantes hominem de Virgine sumptum non esse deum sed ipsius dei singulare habitaculum in quo cum habitat omni plenitudo diuinitatis corporaliter, non tamen dicunt ei conuenire nomen deitatis ut deus dicatur nisi figuratiua locutione qua continens pro contento uel pro contento continens nominamus. [...] Nostri temporis dialectici uel potius heretici uident eam uix ad angelorum dignitatem prouectam’: Gerhoch of Reichersberg, *Liber de novitatibus huius temporis*, 4.11 and 4.35, in *Gerhoch of Reichersberg: Letter to Pope Hadrian about the Novelties of the Day*, ed. by Nikolaus M. Häring (Toronto: Pontifical Institute of Mediaeval Studies, 1974), pp. 32 and 37. See Mews, ‘Accusations of Heresy’, p. 7.

<sup>79</sup> Alexander III, *Epistulae* 242, 243, in PL: 200, cols 288–89; see also JL: II, nos 11011–12.

<sup>80</sup> ‘[For the year 1164] Ipso anno [...] Alexander papa convocatis in unum scholasticis et quibusque litteratis in ipsa vigilia nativitatis domini [...] condemnauit et omnino interdixit omnes tropos et indisciplinata questiones in theologica, Parisiensique episcopi sub obedientia praecepit, ut per totam Franciam eas compesceret. Sententia autem de gloria hominis in Deum assumpti et in Deum nati approbata est ibi papa ac roborata’: *Magni presbyter annales Reicherspergenses*, ed. by Wilhelm Wattenbach and Georg Heinrich Pertz, MGM, Scriptores (in Folio), 17 (Hanover: Hahn, 1861), pp. 443–76 (p. 471), cited in Châtillon, ‘Latran III’, p. 82, n. 30.

<sup>81</sup> ‘In quo Deo et homine, licet natura deificata et divina deificans possit intellegi’: Gerhoch of Reichersberg, *De gloria et honore filii hominis*, in PL: 194, cols 1073–1160, 1082D.



But such debates continued into the 1170s. In May 1170 Alexander III specifically linked the decade-long-deceased Peter Lombard to christological error. In a letter to William, Archbishop of Sens ('William of the White Hands'), the pope proscribed the teaching of the 'perverse doctrine' of Peter Lombard, which taught that Christ as man was not *aliquid*.<sup>82</sup> This decretal gained provenance in Angevin England through the influence of John of Cornwall, who transcribed the decretal in his *Eulogium*. A few days after this correspondence, in early June 1170, another decretal from Alexander to the archbishops of Bourges, Reims, Tours, and Rouen ordered them to likewise take identical measures in the areas under their jurisdiction.<sup>83</sup>

But even such direct papal intervention did not settle the matter once and for all. In a further decretal from Alexander to William, now archbishop of Reims, in February 1177, the pope again reproved the doctrine of Nihilianism. The interdiction against such teaching in Paris, Reims, and their surrounds was to be under pain of anathema. Whereas Alexander previously attributed this 'error' to the Lombard, he surprisingly now avoided identifying the master with this theory.<sup>84</sup> Christological doctrine remained in an uncertain state; the stage was set for the Third Lateran Council of 1179 to settle matters.

### The Third Lateran Council

Two figures played prominent roles in events leading up to the Third Lateran Council of 1179. The first was the Englishman, John of Cornwall (c. 1125/1130–before 1200), who, like Vacarius, lived and worked in the north of England. John was a Cornish native who studied rhetoric under Thierry of Chartres, as well as grammar and dialectic, before graduating to the study of theology.<sup>85</sup> In this higher study, he had been a pupil of Peter Lombard in Paris

<sup>82</sup> Alexander III, *Cum in nostra*, in *Cartularium Universitatis Parisiensis*, ed. by Heinrich Denifle and Emile Châtelain, 4 vols (Paris: Delalain, 1889–97), 1, p. 4; see also PL: 200, cols 685B–C; JL: 11, no. 11806; *Enchiridion symbolorum*, ed. by Denzinger and Schönmetzer, no. 749.

<sup>83</sup> *Eis qui disponente*, in PL: 200, col. 684; JL: 11, no. 11809.

<sup>84</sup> *Cum Christus*, in *Cartularium Universitatis Parisiensis*, ed. by Denifle and Châtelain, 1, pp. 8–9; *Regesta Pontificum Romanorum*, ed. by Jaffé and others, no. 12785; *Enchiridion symbolorum*, ed. by Denzinger and Schönmetzer, no. 750.

<sup>85</sup> For what follows on John's life and career, see Eleanore Rathbone, 'John of Cornwall: A Brief Biography', *Recherches de théologie ancienne et médiévale*, 17 (1950), 46–60; Colish, *Peter*

in the 1150s, and up to 1160 a student of the Lombard's successors, Maurice of Sully and Robert of Melun. After returning to England after 1173, he taught theology in the household of Walter of Coutance, Bishop of Lincoln (1183–85), and also possibly at Oxford; in addition he held appointment as a papal judge delegate during Bishop Hugh's succession to the bishopric of Lincoln (1186–1200). In the last years of his life, John became archdeacon of Worcester. John linked Peter Lombard with the *habitus* theory — a theory seen by contemporaries as denoting Nihilianism. John asserted influence in the conciliar debates of the late 1170s through his *Eulogium ad Alexandrum papam tertium*, composed in two redactions: the first on the eve of the Lateran Council, in 1177–78, and designed to influence events therein; and the second composed with a *retractio* during or after the council.<sup>86</sup> The *Eulogium* confirms John's position as a follower of the *assumptus homo* position, and in polemical style he attacked proponents of the second and third theories, confirming that Christ as man is an *aliquid*.<sup>87</sup> The *Eulogium* claimed that Peter Lombard had received the *habitus* theory from his master, Peter Abelard, whose works he often diligently studied. But, insofar as the Lombard accepted this viewpoint, said John, he did so as an opinion, not as a position (*non esset assertio sua sed opinio sola*).<sup>88</sup>

The second figure, Walter of St Victor (d. 1179/1180), attempted to link Peter Lombard even more explicitly with the charge of Christological Nihilianism in

*Lombard*, I, p. 428.

<sup>86</sup> John of Cornwall, *Eulogium*, in 'The "Eulogium"', ed. by Häring, *retractio* at p. 257. The first redaction of John's *Eulogium* was composed between the announcement of the Third Lateran Council, that is, towards the end of 1177 or more likely in the course of the year 1178, and its opening in 1179, the second during or after the Lateran Council: Châtillon, 'Latran III', pp. 84–85.

<sup>87</sup> John of Cornwall, *Eulogium*, in PL: 199, cols 1043A–86B; 'The "Eulogium"', ed. by Häring, pp. 256–300. For accounts of John's christology, see Joseph De Ghellinck, *Le mouvement théologique du XIIe siècle: sa préparation lointaine, avant et autour de Pierre Lombard, ses rapports avec les initiatives des Canonistes*, 2nd edn (Bruges: Éditions 'De Tempel', 1948), p. 255; Châtillon, 'Achard de Saint-Victor', pp. 317, 319; Häring, 'The Case of Gilbert', p. 30, n. 46; Astrik Ladislav Gabriel, 'English Masters and Students in Paris during the Twelfth Century', in *Garlandia: Studies in the History of the Medieval University*, ed. by Astrik Ladislav Gabriel (Notre Dame, IN: University of Notre Dame Press, 1969), p. 15; Colish, *Peter Lombard*, I, p. 27, n. 36; pp. 428–31, 434–36.

<sup>88</sup> John of Cornwall, *Eulogium*, in 'The "Eulogium"', ed. by Häring, p. 256.

his *Contra quattuor labyrinthos Franciae* and his *Sermones*.<sup>89</sup> While its modern editor, Glorieux, stated that the *Contra quattuor labyrinthos* was composed before the Lateran Council of 1179, that is 1177–78 — and like John's *Eulogium*, written in a bid to influence its outcome — Châtillon instead believed that it was composed after the events of 1179.<sup>90</sup> But, unlike the more scholastic temperament of John's piece, Walter's work reveals him as an 'arch-conservative'.<sup>91</sup> As prior of St Victor at the time of that abbey's decline after Richard of St Victor's death in 1173, he attacked the 'four labyrinths' of France, namely Peter of Poitiers, Peter Lombard, Peter Abelard, and Gilbert of Poitiers, for bringing ruin to theology.

It appeared that the Third Lateran Council of 1179, presided over by Alexander III, might provide the ideal forum to settle the christological issue, not to mention the orthodoxy of Peter Lombard's teaching. But, once again, the opportunity was lost; the subject was not broached at this council, and no definitive ruling was made.<sup>92</sup> If we are to accept Châtillon's hunch that Walter's account post-dated the council, there was no lack of lobbying for a conclusive decision on the issue. His *Contra quattuor labyrinthos* refers to the intervention of Adam of St Asaph (not Adam of Petit-Pont/Adam of Wales as previously thought) and several other cardinals, when the subject of Peter Lombard's teaching was raised; Walter expressed his disgust when their efforts in defending the Lombard effectively allowed Alexander to foreclose discussion on the issue.<sup>93</sup>

<sup>89</sup> Walter of St Victor, *Contra quattuor labyrinthos Franciae*, in 'Le Contra Quatuor', ed. by Glorieux, pp. 195–335; cf. Walter of St Victor, *Sermones*, 5.5, 8.2, 20.7, in *Galteri a sancto Victore et quorundam aliorum. Sermones ineditos triginta sex*, ed. by Jean Châtillon, *Corpus Christianorum, Continuatio Medievalis*, 30 (Turnhout: Brepols, 1975) (hereafter appearing as '*Sermones ineditos*', ed. by Châtillon), pp. 42–45, 64–65, 176. On Walter's christology, see the introduction in 'Le Contra Quatuor', ed. by Glorieux, p. 192; Pierre Glorieux, 'Une mauvaise action et du mauvais travail: le *Contra quattuor labyrinthos Franciae*', *Recherches de théologie ancienne et médiévale*, 21 (1954), 179–93; De Ghellinck, *Le mouvement théologique*, pp. 260–61; see also the introduction to *Sermones ineditos*, ed. by Châtillon, pp. 9–10.

<sup>90</sup> Glorieux provides the date 1177–78, dismissing apparent references in that text to the Lateran Council of 1179 as referring instead to a minor consistory in Rome. Châtillon questions the basis for Glorieux's dating in the introduction of *Sermones ineditos* [ed. by Châtillon, pp. 3–10; cf. Châtillon, 'Latran III', pp. 87–88]. Colish agrees with Glorieux's traditional dating: Colish, *Peter Lombard*, 1, p. 431.

<sup>91</sup> Colish, *Peter Lombard*, 1, p. 431.

<sup>92</sup> Châtillon, 'Latran III', pp. 83–89.

<sup>93</sup> *Contra quattuor labyrinthos Franciae*, in 'Le Contra Quatuor', ed. by Glorieux, p. 201.

## Conclusion

What is the significance of these events and contemporaneous debates for understanding the context in which Vacarius may have composed his *Tractatus de assumpto homine*? First, they assist, without definitively assigning, a date to Vacarius's treatise, as I will discuss in the second part of this chapter. Second, the strong English involvement in the debate is noteworthy. Whilst scholarship has traditionally looked to the three doctrines set out by the Lombard, and subsequently by his 'followers', as establishing the parameters of Christological debates in the second half of the twelfth century, it is clear that the discussion moved beyond Paris, and, moreover, beyond the strictly 'scholastic' milieu. The figures involved in this debate, beginning with Robert Pullen, and later involving Robert of Melun and John of Cornwall, were not only present in England, but also, like Vacarius, held positions of ecclesiastical, and even papal, preferment. This was the age of the English ecclesiastical bureaucrat.

Third, the terms of the debate on Christological Nihilianism, although centred on the Lombard's terminology, did not focus on him *per se*. Whereas the debates in the 1140s dealt implicitly with the issue of Christ's humanity, they focused either on the *partes* theory of Abelard, or on Gilbert's metaphysics of forms. In contrast, the main issue in the debates of the 1160s and 1170s was identifying Christological Nihilianism. But there was, nevertheless, a reluctance to identify the Lombard with such a position, due, perhaps, to his office as bishop of Paris, as well as his being a venerable and respected scholar and teacher. Vacarius, therefore, was composing in his work when the men of the schools knew who they were attacking, but may have had reason not to be explicit in doing so.

The final point worth making about these proponents of the *assumptus homo* theory is that, while they were reasonably homogenous in their doctrine (as Nielsen has suggested in his study), there were variations in points of detail, language, manner of explanation, method, and tone; this broad group also encompassed both the monastic and scholastic spheres. It is in this mixed context that we must place Vacarius's work on the *assumptus homo*.

*Part II: The Tractatus de assumpto homine*

**Date**

The dating of the *Tractatus de assumpto homine* has been the basis of much speculation. Southern rightly claimed that Vacarius's work was a product of the 1160s, when the subject of the hypostatic union was a matter of 'bitter controversy'.<sup>94</sup> Working backwards, De Ghellinck suggested a *terminus ad quem* for the *Tractatus de assumpto homine* of 1177, on the basis that the issue of the hypostatic union had been 'resolved' by this date, when Pope Alexander III denounced and censured the theory that Christ as man was not *aliquid*.<sup>95</sup> But the composition may have been even later. As late as the Third Lateran Council of 1179, the issue of Nihilianism had not, contrary to Châtillon's understanding, been settled, let alone by 1177, as De Ghellinck supposed. Indeed, Nielsen has argued that an anonymous student of Peter the Chanter and Stephen Langton, writing around 1180, continued the debate on the subject of logic and the hypostatic union.<sup>96</sup> Thus, to assume that the latest date for the *Tractatus de assumpto homine* must be 1177, or even 1179, on the basis that this was the date when the christological issue was 'settled' by Alexander, is incorrect. Alexander's pronouncements in 1177 were no more definitive than his decretal of 1170. In fact, the 1170 decretal more directly identified the Lombard as the propagator of the Nihilianist error. As I will discuss, Vacarius's treatise makes no mention of the Lombard, nor of the *habitus* theory by name. Neither does it adopt the Lombard's tripartite classification of the christological stances. This means that Vacarius must have composed his treatise either before the Lombard was linked with the error of Christological Nihilianism, that is, before the May 1170

<sup>94</sup> Richard W. Southern, 'Master Vacarius and the Beginning of an English Academic Tradition', in *Medieval Learning and Literature: Essays Presented to R. W. Hunt*, ed. by J. J. G. Alexander and M. T. Gibson (Oxford: Clarendon Press, 1976), p. 63; Richard W. Southern, *Scholastic Humanism and the Unification of Europe. Volume 2: The Heroic Age* (Oxford: Blackwell, 2001), p. 163, p. 162 (hereafter cited as 'Southern, *Scholastic Humanism: The Heroic Age*').

<sup>95</sup> Joseph De Ghellinck, 'Magister Vacarius: Un juriste-théologien peu aimable pour les canonistes', *Revue d'histoire ecclésiastique*, 44 (1949), 173–178 (p. 175).

<sup>96</sup> Nielsen, 'Logic and the Hypostatic Union', pp. 251–79; Lauge Olaf Nielsen and Sten Ebbesen, 'Texts Illustrating the Debate about Christology in the Wake of Alexander III's 1177 Condemnation', *Cahiers de l'Institut du moyen-âge grec et latin*, 66 (1996), 217–51.

decretal, or after 1177, when Alexander's decretal specifically avoided linking Peter to the error.

Guareschi and Häring suggested a much earlier date of 1150–55.<sup>97</sup> This was based on a *terminus a quo* of 1149, a date suggested by Da Milano as coinciding with a period of silence imposed on Vacarius's legal teaching by King Stephen (1135–54), which led the Italian master to turn his mind to matters of theology.<sup>98</sup> In the absence of further corroborating material, Da Milano asserted that such a date was further supported by 'internal evidence' and 'the general tenor of the treatise'.<sup>99</sup> The treatise was certainly composed before the *Summa de matrimonio*, as the preface to this piece on marriage law mentions the *Tractatus de assumpto homine*; in Chapter Two of this book, I have dated the marriage treatise to the period 1156–81, but most likely 1166–70. Thus, a pre-1170 date is indicated for the *Tractatus*. As will be seen, the content of the *Tractatus* suggests a closer link to the doctrinal debates of 1163–64, rather than the 1170s. In addition, Vacarius himself was present in Paris in 1164, in the aftermath of the Council at Tours in 1163 wherein Alexander had failed to provide a definite solution; such a situation may have provide just the motivation Vacarius needed to set out his own account of the orthodox *assumptus homo* position. Accordingly, I suggest a date for the *Tractatus de assumpto homine* between the second half of 1164 and 1170.

It is clear from this discussion that an understanding of the debates on the union of the human and divine in Christ in the mid- to later-twelfth century is crucial to pinpointing the date of composition of the *Tractatus de assumpto*

<sup>97</sup> 'The "Tractatus De Assumpto Homine" by Magister Vacarius', ed. by Nikolaus M. Häring, *Mediaeval Studies*, 21 (1959), 62–75 (text), 147–61 (commentary) (p. 148). Hereafter the text will be cited as '*Tractatus de assumpto homine*' and the commentary as 'The "Tractatus"', ed. by Häring. See also Guareschi, 'Gli incontri', p. 401.

<sup>98</sup> 1150 has commonly been seen as the date in which Stephen, according to John of Salisbury, became suspicious of the influence that Roman law might have in ecclesiastical hands, and ordered Vacarius into exile: Richard W. Southern, 'From Schools to University', in *The History of the University of Oxford, Volume I: The Early Oxford Schools*, ed. by Jeremy I. Catto (Oxford: Clarendon Press, 1984), pp. 1–36 (p. 10). The relevant passage is as follows: 'Tempore regis Stephani a regno iussae sunt leges Romanae, quas in Britannium domus uenerabilis patris Theodaldi Britanniarum primatis asciuerat. Ne quis etiam libros retineret edicto regio prohibitum est et Vacario nostro indictum silentium': John of Salisbury, *Policraticus*, 8, 22, in *Iohanni Saresberiensis Episcopi Carnotensis Policratici*, ed. by C. C. J. Webb, 2 vols (Oxford: Clarendon Press, 1909), II, p. 399.

<sup>99</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 96.

*homine* and the *Liber contra*, the audience of these works, and their intellectual context.

### Scholarship on Vacarius's Christology

Häring's introduction to his edition of the *Tractatus de assumpto homine* made only limited reference to the treatise's relationship to contemporary accounts of the christological debate.<sup>100</sup> He observed that Vacarius had 'done very little to familiarize himself with contemporary theology which was anything but stagnant at this time'.<sup>101</sup> He asserted nevertheless that Vacarius was a 'follower' of the first of the three theories proposed by Peter Lombard and, therefore, spoke the language of Hugh of St Victor 'some forty years after Hugh's death'.<sup>102</sup> He also mentioned several figures involved in the debates at this time, namely John of Cornwall, Robert of Melun, and Bishop Maurice of Paris, but only cited in evidence a letter dated 1185–87, from Everard of Ypres to Pope Urban III, which had direct bearing on the issues raised by Vacarius: this letter 'appeared' to criticize the same theory which Vacarius attacked.<sup>103</sup> Häring, however, made no detailed comparison of Vacarius's work with those of his contemporaries, although he noted common arguments in Vacarius's *Liber contra*.

Nielsen conducted an analysis of Vacarius's *Tractatus de assumpto homine* and the final part of the *Liber contra*, in the context of twelfth-century christology, although parenthetically to his study of the christology of Gilbert of Poitiers.<sup>104</sup>

<sup>100</sup> 'The "Tractatus"', ed. by Häring; Nielsen [*Theology and Philosophy*, p. 202, n. 44] labelled Vacarius a follower of Hugh of St Victor, as did Principe in *William of Auxerre's Theology*, pp. 9–12, 68–70.

<sup>101</sup> A criticism shared by Southern, *Scholastic Humanism: The Heroic Age*, p. 163.

<sup>102</sup> 'The "Tractatus"', ed. by Häring, p. 149.

<sup>103</sup> *Ibid.*, pp. 149–50. Da Milano, when dealing with the final chapter of the *Liber contra*, identified the doctrine against which Vacarius was arguing as 'neo Adoptionism' or 'nihilism', which he attributed to Abelard and his followers: *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 342.

<sup>104</sup> Nielsen, *Theology and Philosophy*, pp. 17–18. Da Milano was unable to access the Cambridge University Library manuscript containing the (then) unedited text of the *Tractatus de assumpto homine* because of the circumstances of the Second World War. For this reason, with only Maitland's edition of the prologue to the *Tractatus de assumpto homine*, he was unable to compare the christology in the two works, and, on that basis, declined to provide any detailed christological analysis or comparison of the work: *L'Eresia di Ugo Speroni*, ed. by Da

Like Häring, Nielsen characterized Vacarius's christological views as being based on those of Hugh of St Victor. Hugh's 'followers', including Vacarius, he believed, were reasonably homogeneous in their doctrine on the hypostatic union; for this reason he confined his comments on Vacarius's *Tractatus de assumpto homine* to footnotes. Other Victorines included by Nielsen in his study were Robert of Melun, John of Cornwall, Achard of St Victor, the authors of the *Allegoria super Vetus et Novus Testamentum* and the *Apologia de Verbo incarnato*, Robert Pullen, and the author of the *Summa sententiarum*. He contrasted the christological doctrine of Vacarius and his fellow Victorines with Gilbert of Poitiers and his followers, as well as with Peter Lombard and his followers. Nielsen's study is most obviously limited in its treatment of Vacarius's christology by confining its discussion of the *Tractatus de assumpto homine* and the *Liber contra* to footnotes. Nielsen failed to explain or discuss Vacarius's Roman law background, the overall structures of the *Tractatus de assumpto homine* and *Liber contra*, or other issues on the hypostatic union dealt with in Vacarius's works.

As I noted in the introduction, Southern has commented that the *Tractatus de assumpto homine* was not 'scholastic' nor 'connected with any scholastic tradition'.<sup>105</sup> The reason for this, Southern suggested, was that Vacarius's interest in the debate on the hypostatic union had its origins, not from any scholastic sources, but from 'a conversation with a friend', from whom Vacarius derived his knowledge of the debate. Further, the authorities used by Vacarius, namely Boethius, Augustine, and Claudianus Mamertus, Southern implied, were works which he 'happened to own or have at his disposal', rather than being noteworthy sources of scholastic currency. Finally, Southern added, Vacarius quoted these old-fashioned sources 'in a long-winded discursive fashion uncharacteristic of scholastic practice'.<sup>106</sup>

Guareschi's attempt to contextualize Vacarius in twelfth-century theology concluded that such a comparison was useless, since it would only confirm

Milano, p. 344. Maitland edited the prologue to the *Tractatus de assumpto homine* in an appendix to his edition of the *Summa de matrimonio*: 'Magistri Vacarii Summa De Matrimonio', ed. by Frederic William Maitland, *Law Quarterly Review*, 13 (1897), 133–42 (commentary), 270–87 (text) (pp. 142–43).

<sup>105</sup> Southern, *Scholastic Humanism: The Heroic Age*, p. 163.

<sup>106</sup> *Ibid.*, p. 163. Häring shared this view: 'The "Tractatus"', ed. by Häring, p. 149.



Vacarius's failings as a theologian.<sup>107</sup> Vacarius, Guareschi explained, was a legist, whose intellectual curiosity and religious preoccupation allowed him to transcend the limits of his own discipline. More broadly, Guareschi suggested that, whilst historiography had traditionally centred on the links between canon law-theology and canon law-Justinianic Roman law,<sup>108</sup> Vacarius was an exemplar of the link between theology and Justinianic Roman law.<sup>109</sup> Vacarius, according to Guareschi, provided the possibly unique hermeneutic of a 'Justinianic Roman law theologian' who juxtaposed the disciplines of theology and civil law.<sup>110</sup> Despite these observations, however, Guareschi's study represents a lost opportunity to build on the preliminary findings of Nielsen and Häring, by undertaking a detailed comparison of Vacarius's work with other twelfth-century theologians.

Other scholars have largely agreed with Southern's views on Vacarius's works dealing with christology, namely that they were 'independent' of scholastic teaching of the twelfth century. With few exceptions, most scholars, without a close reading of these works, have been content to characterize them as the aberrant work of an educated man dabbling in a discipline outside his field of expertise, namely Roman law.<sup>111</sup> Like Southern, these scholars did not compare the Vacarian views to those of other contemporary thinkers. De Ghellinck and Stein concluded that the *Tractatus de assumpto homine* was an interesting

<sup>107</sup> Guareschi purported to conduct a comparison of Vacarius' christological views in the *Tractatus de assumpto homine* with other twelfth-century theological works, but substantially repeated the arguments made by Nielsen. He found that Vacarius's arguments largely squared with the 'Victorine' views of Robert and John, but also exhibited original features of their own. Unlike Nielsen, however, Guareschi focused on the *Tractatus de assumpto homine* and did not consider the *Liber contra*; he also confined his comparison to Robert of Melun and John of Cornwall only, and to their opponents, Peter Lombard and Gilbert of Poitiers. He concluded (in the words of Häring) that the *Tractatus de assumpto homine* was characterized by its 'mimicking' of the school of Hugh of St Victor almost forty years after the death of that figure. He called this choice by Vacarius a 'theoretical option': Guareschi, 'Gli incontri', p. 407.

<sup>108</sup> The 'canon law-theology' epistemological paradigm was established in the writings of Jean De Ghellinck and Martin Grabmann, whilst that of the 'canon law-Justinianic Roman law' was established by Pierre Legendre and Bruno Paradisi: Guareschi, 'Gli incontri', pp. 384–85.

<sup>109</sup> Guareschi, 'Gli incontri', p. 385.

<sup>110</sup> Ibid., p. 390.

<sup>111</sup> De Ghellinck, 'Magister Vacarius', pp. 173–78.

‘diversion’ by a civilian-trained lawyer in the field of theology.<sup>112</sup> Stein additionally accused Vacarius of applying civil law ideas of possession to problems of christology, a claim unsupported by my reading of the treatise.

The gaps in the study of Vacarius’s *Tractatus de assumpto homine* and *Liber contra*, accordingly, are substantial. It is especially notable that no study exists which undertakes a close reading or comparison of the christological content of both the *Tractatus de assumpto homine* and the last section of the *Liber contra*, or compares both to the contemporaneous views of other twelfth-century works on christology. Southern and Häring have been content to label Vacarius as a proponent of the *assumptus homo* position; Häring described the position Vacarius attacks as ‘disguised Eutychianism’.<sup>113</sup> This section, then, aims to overcome these deficiencies with a more thorough assessment of Vacarius as a theologian.

In the remainder of this chapter I will proceed with an analysis of Vacarius’s work on the human nature in Christ with two contexts in mind: the first is that of the debates on the specific explanation of the hypostatic union encountered in Hugh of St Victor, Peter Abelard, Gilbert of Poitiers, and Peter Lombard, and the ways in which these masters identified it within the tripartite Lombard schema. The second context is confined to those theologians who participated in a non-Parisan intellectual orbit in the 1160s, although they can still be described as ‘scholastic’, and preoccupied with the issue as to whether Christ as man was *aliquid* (‘something’) from a practical and polemical perspective, rather than a simply speculative and academic one. Within this proper historical perspective, we can more clearly delineate the subtleties in doctrine captured by Vacarius in his treatise on the assumption by Christ of humanity.

### Outline and Structure of the *Tractatus de assumpto homine*

The *Tractatus de assumpto homine* is a discussion of some of the theological and linguistic problems pertaining to the union of the human nature in the incarnate Christ. It is a comparatively short treatment of the complex issue of the hypostatic union. Häring’s edition is just over thirteen pages long, which he subdivides into forty *capitula*, each approximately one third of a page in length,

<sup>112</sup> Peter Stein, ‘The Vacarian School’, *Journal of Legal History*, 13 (1992), 23–31 (pp. 26–30).

<sup>113</sup> ‘The “Tractatus”’, ed. by Häring, p. 150; Southern, *Scholastic Humanism: The Heroic Age*, p. 62.

while the *summae* by other masters on this topic are often hundreds of edited pages long. Further, whilst many treatises of this genre were structured into *quaestio*, *distinctio*, and *capitula*, the *Tractatus de assumpto homine* is not.<sup>114</sup> It has no prologue or list of contents. This makes examination of the *Tractatus de assumpto homine* difficult.

In an intriguing introduction to his *Tractatus de assumpto homine*, Vacarius begins:

To his B., his Vacarius sends greetings. After the accustomed discussion between us on *homo assumptus* [i.e. the man assumed by the Word of God] I often had a discussion with several others following the paths of your opinion, who expounded the particular reasoning to me of that opinion. The essence of that opinion indeed is that it is not any man (*aliquis homo*) who intervened for us [and] whom God the-Word absorbed (*assumo*): but rather He [God the-Word, i.e. the second person of the Trinity] assumed [in this person] a soul and a body.<sup>115</sup>

The tone of this opening to the treatise is noteworthy for its friendly, unpolemical tone. Vacarius wishes to debate an opinion that he has heard in conversation with a certain 'B', with whom it appears that Vacarius has a regular exchange of ideas. This anonymous B seems to express an understanding of the incarnation by which the Word absorbs the body and soul of man, but not man himself. The immediate issue for clarification is to establish the nature of B's opinion, and to identify it in the Lombard's schema and the late-twelfth-century conciliar debates on Christological Nihilianism. Vacarius's treatise is centred on refuting this error and in providing a positive formulation in explanation of the hypostatic union.

Of further note is Vacarius's apparent humble tone. Early in the treatise, he points to the difficulty of writing on the hypostatic union, a task he feels exceeds his abilities. But, despite this obstacle, he determines to complete it for the benefit of those who urge him on.<sup>116</sup> This perhaps mock tentativeness is manifest in an interesting passage, in which he states:

<sup>114</sup> The editor divided the text into forty paragraphs, each of which I will designate with the symbol '§': *L'Eresia di Ugo Speroni*, ed. by Da Milano, pp. 20–24.

<sup>115</sup> 'Suo B. suus V(acarius) salutem. Post collationem de homine assumpto inter nos habitam saepe cum plerisque aliis vestigia opinionis vestrae sectantibus de re eadem tractatum habui, qui etiam rationem ipsius opinionis mihi exposuerunt praecipuam. Summa vero eiusdem opinionis ea est ut non sit aliquis homo qui pro nobis interpellat quem suscepit Deus-Verbum: sed animam et corpus tantum assumpsit': *Tractatus de assumpto homine*, §1, p. 147.

<sup>116</sup> *Tractatus de assumpto homine*, §4, pp. 162–63.

I have committed it [the treatise] to you, my friend, to inspect and discuss with the intention that you should carefully examine all that is written with love of the truth and, if something was inserted here imprudently, it may be corrected by the sharpness of your wit before it reaches others.<sup>117</sup>

It becomes quickly apparent, however, that Vacarius is not so much concerned with his own errors, as those of his anonymous intellectual opponent and invisible interlocutor, known only by the initial B. The rhetorical humility which Vacarius demonstrates is also an implied censure of his opponent; although only recently arrived to theology and speculative exegesis from his accustomed legal teaching, Vacarius is apparently confident of finding ‘truth’ in his orthodoxy.

### Views of the Dissenting ‘B’

What is the nature of the argument faced by Vacarius, that in the incarnation the Word assumed merely a soul and a body? According to Vacarius, if B or his followers support the notion that the assumed manhood is flesh and soul and therefore separate things, then a number of problems flow. First, there will be ‘nothing’ assumed by the Word: ‘For when we say that [...] the Word took up (*suscipio*) human nature or man, [it took up] nothing (*nihil*) unless we signify [that it took up] rational soul and human flesh with their union (*compage*) in one substance’.<sup>118</sup> This erroneous approach, Vacarius reminds his reader, is the doctrine which is supported by certain famous modern masters, as well as in the schools.<sup>119</sup> Vacarius tries to see the positives in this line of argument: he grants that this theory has, as its aim, the avoidance of the error of Nestorianism (that is, attributing two persons to the Godhead), since B and his followers have as their most compelling reason the proposition that, in the incarnation by the

<sup>117</sup> ‘Quod discretione vestrae dilectionis eo studio inspiciendum discutiendumque commisi quo scriptum est ut veritatis amore singula diligenter examinetis et, si quid imprudenter ibi insertum fuerit, industria vestrae prudentiae antequam ad alium perveniat corrigatur’: *Tractatus de assumpto homine*, §5, p. 163.

<sup>118</sup> ‘Nam cum dicimus Dei sapientiam seu Verbum suscepisse humanam naturam vel hominem, nihil nisi rationalem animam et humanam carnem absque earum in unam substantiam compage significamus assumptas’: *Tractatus de assumpto homine*, §2, p. 162.

<sup>119</sup> ‘Haec est doctrina celebris a quibusdam modernis inventa magistris. Haec est via in scholis maxime frequentata et trita hodie’: *Tractatus de assumpto homine*, §2, p. 162. Note that another Victorine, the anonymous author of the *Summa theologiae*, refers to his opponents as *omnibus modernis*: Häring, ‘The Case of Gilbert’, p. 39, n. 15.

Word, there was only a single person.<sup>120</sup> But Vacarius counters that such a view denies the entire (*totus*) human nature in Christ. For, although this view ‘seems to attribute to Christ an entire [human nature], in conceding to Him a rational soul and human flesh, they nevertheless take away from this entire [human nature], by denying that the substance of this [i.e. *assumptus*] *homo* consists of these’.<sup>121</sup> In doing so, the dissenters undermine the reality of Christ’s humanity by separating his body and soul so as to prevent these from constituting one substance resulting in a human personality. The better view, he adds, is that ‘there was a union such that from them there was subsisting a man of perfect human substance just like any other man’.<sup>122</sup> The problem, therefore, for Vacarius is that B’s view falls foul of the charge of Christological Nihilianism.

In terms of the Lombard’s three theories, the idea of a non-united body and soul in the *assumptus homo* has little resemblance to the second position, but more identification with the third. According to the Lombard, the second theory proposed a ‘composition’ in the human being in the incarnation, consisting of a rational soul and human flesh; it also specified that these were of a human and divine nature.<sup>123</sup> Thus, the separation of the body and soul in the *assumptus homo* did not constitute part of this theory. Moreover, Gilbert of Poitiers, to whom the second theory is commonly linked, held that the Word assumed a ‘complete’ human nature, that is the mutually united body and soul; in this manner his interpretation in no way weakened the union between the body and soul.<sup>124</sup> The third theory, in contrast, has greater resemblance to the view put forward by B and his followers; on the Lombard’s understanding of the *habitus* position, ‘these two — namely, soul and flesh — were united to the person or nature of the

<sup>120</sup> ‘Eius autem urgentissimam rationem talem reddunt quoniam personam a Verbo assumptam esse necesse est’: *Tractatus de assumpto homine*, §2, p. 162.

<sup>121</sup> ‘Naturamque humanam in Christo ita disponunt ut, dum totam eam Christo tribuere videantur animam rationalem et humanam ei carnem concedendo, totam ei auferant negando substantiam ipsius hominis ex eis consistere’: *Tractatus de assumpto homine*, §3, p. 162.

<sup>122</sup> ‘[...] fuerit coniunctio ut ex eis unus subsistens fuerit homo substantiae humanae perfectae sicut quibuslibet aliis homo’: *Tractatus de assumpto homine*, §5, p. 163.

<sup>123</sup> Peter Lombard, *Sententiae*, 3, d. 6, c. 3, 1, in *Sententiae in IV libris distinctae*, ed. by Brady, 1, p. 52.

<sup>124</sup> Gilbert of Poitiers, *Commentarius*, ed. by Häring, pp. 315, 318, 331, 337, 338.

Word'.<sup>125</sup> Proponents of the *habitus* position held that there was no union of soul and flesh in the Christ as man.<sup>126</sup>

As observed above, Vacarius links the notion of a separate body and soul being absorbed in the incarnation, with the error of Christological Nihilianism. He initially expresses this concern in terms of whether the *assumptus homo* which the Word assumed was some man (*aliquis homo*).<sup>127</sup> He indicates the same concern in different terms later in the treatise, asking whether God, insofar as He is man in the incarnation, is *aliquid*. Vacarius answers in positive terms that God as man was indeed *aliquid* in the incarnation. He uses the word *aliquid* on some seven occasions in the treatise to express this.<sup>128</sup> This notion was characteristic of *assumptus homo* theorists and their assertions that Christ, insofar as He was man, was *aliquid* or *aliquis homo*. The charge of Christological Nihilianism, however, could be levelled equally against the second and third theories.

The subsistence view denies that Christ was *aliquid*. On the Lombard's expression of that theory, a man's body and soul were composed, but not united, together with a divine substance in the incarnation, thereby denying the existence of a human substance therein.<sup>129</sup> In this sense, then, Christ as man was not *aliquid*. Gilbert of Poitiers, credited with the theological underpinnings of

<sup>125</sup> Peter Lombard, *Sententiae*, 3, d. 6, c. 4, in *Sententiae in IV libris distinctae*, ed. by Brady, I, p. 55. Da Milano likewise held that this dissenting opinion was the view of Peter Abelard and his 'followers', that is, the *habitus* theory: *L'Eresia di Ugo Speri*, ed. by Da Milano, p. 342.

<sup>126</sup> Peter of Poitiers, *Sententiae libri quinque*, in PL: 211, cols 1177A–B; Bandinus, *Summa Sententiarum libri quatuor*, in PL: 192, col. 1074B; Gandulph of Bologna, *Sententiarum libri quatuor*, in *Magistri Gandulphi Bononiensis Sententiarum*, ed. by von Walter, p. 324. See also Nielsen, *Theology and Philosophy*, pp. 313–14, 316, in which he adds the *Breves dies hominis*, fols 54<sup>v</sup>, 56<sup>v</sup>, and pseudo-Poitiers glosses, fol. 80<sup>r</sup>.

<sup>127</sup> '[...] opinionis ea est ut non sit *aliquis homo* qui pro nobis interpellat': *Tractatus de assumpto homine*, §1, p. 162 [my emphasis].

<sup>128</sup> '[...] per naturam inde Christus *aliquid* est, quia Deus est, ita per assumptionem idem ipse inde est *aliquid*, quia est homo. Hii autem qui haec negant esse vera, non considerant quod variis modis et rationibus dicitur res esse vel eadem esse vel esse *aliquid*: *Tractatus de assumpto homine*, §27, p. 170; '[...] Et sicut vere et proprie ipse est [sc. Christus] *aliquid*, quia est Deus origine et natura, ita vere et proprie idem ipse Christus est *aliquid*: *Tractatus de assumpto homine*, §29, p. 171; 'Non enim quia est animal sed quia homo, "persona" dicitur *aliquis*[...] non valeat asserendo quod non sit Deus inde *aliquid*, quia est homo': *Tractatus de assumpto homine*, §30, p. 171 [my emphasis].

<sup>129</sup> Peter Lombard, *Sententiae*, 3, d. 6, c. 3, 1, in *Sententiae in IV libris distinctae*, ed. by Brady, I, p. 52. It is necessary, however, to bear in mind Nielsen's observation that Peter Lombard misunderstood Gilbert's theory: Nielsen, *Theology and Philosophy*, p. 262.

that theory, was forced to deny that God as man was *aliquid*, due to his ontological theory of forms: he denied that Christ, insofar as he was man, was a substance or *id quod* or *aliquid*.<sup>130</sup> Gilbert, when describing the constitution of Christ's humanity, observed the Boethian distinction between the concrete material object or reality (*id quod*) or person (*is qui*), and the cause of that reality (*id quo*). The *id quo* classified the reality according to the Aristotelian categories. Gilbert held that Christ was one person (*is qui*), which was a substance (*id quod*), with a twofold *id quo* (the divine essence, or divinity, and the human essence, or humanity). But Gilbert denied that Christ's human nature (or *Christus secundum quod homo*) was a substance or *id quod*; accordingly, he denied that Christ as man was *aliquid*.<sup>131</sup> Thus, the subsistence theory arguably put forward a Christological Nihilianist position.

In respect of the *habitus* viewpoint, John of Cornwall observed that it 'was known' that this theory denied that Christ is 'some substance existing from flesh and soul' and, therefore, that 'Christ as man is *aliquid*'.<sup>132</sup> It more obviously fell foul of the charge of Christological Nihilianism because it indicated that humanity's union with the incarnate Word was adventitious or accidental, as depicted in the relational *habitus*. Further, it explicitly suggested that Christ's humanity was not a concrete or material reality and denied that the union between God and man was 'substantial'.<sup>133</sup> In this way, Vacarius's understanding of B and B's idea of a separate soul and body in the hypostatic union, coupled with B's denial that Christ as man was *aliquid*, suggests that Vacarius thought B must be a proponent of the third theory. Although Vacarius does not identify B and his dissenting followers with the term *habitus* or with Peter Lombard, it

<sup>130</sup> 'In eo [Christus] namque nihil est quod sit homo quod ei, qui in illo deus sit, intelligatur conjunctum': Gilbert of Poitiers, *Contra Eutychen*, in PL: 64, cols 1382D, 1383BC.

<sup>131</sup> Gilbert of Poitiers, *Contra Eutychen*, in PL: 64, cols 1383A, 1382D, 1383B–C; Häring, 'The Case of Gilbert', pp. 26, 32; Raschko, 'Aquinas's Theory', p. 417.

<sup>132</sup> As John of Cornwall observed, 'Notandum etiam quod haec tertia sententia commune habet cum secunda quod Christus non est aliqua substantia constans ex carne et anima quod Christus secundum quod homo non est aliquid': John of Cornwall, *Eulogium*, c. 1, in PL: 199, col. 1048A.

<sup>133</sup> As Studeny and other have argued: Studeny, *John of Cornwall*, p. 35. Häring argued that the *habitus* doctrine did not necessarily involve christological nihilism but this is rebutted by Nielsen, who argues that christological nihilism is merely the name of the *habitus* theory considered on the basis of its appraisal of Christ's ontological relationship to the *assumptus homo*: Nielsen, *Theology and Philosophy*, p. 286; cf. Häring, 'The Case of Gilbert', p. 28.

is most likely that B followed the *habitus* theory in explaining the hypostatic union.

### Vacarius's Positive Theology on the Hypostatic Union

In formulating a positive explanation of the hypostatic union, Vacarius outlines his approach to the problem of the *assumptus homo* in the incarnation:

Concerning the *assumptus homo*, He is a substance subsisting (*subsistens*) from soul and flesh and a substrate (*subiectus*) to the properties of human and animal nature, but not a divine [substance]. And this [i.e. the *assumptus homo*] is a person, but is not properly called person when absorbed (*assumere*) [in the incarnation]. And since the words 'Christ', 'Lord of Glory', and 'Giant of a dual substance' are words of two substances — and not [the word] 'God', on that account Christ — not 'God' not 'man' — is called one 'person' from a dual substance. And therefore God is truly and properly *aliquid* because He is a man.<sup>134</sup>

Häring noted that this passage was in rubrics and summarized the treatise.<sup>135</sup> While it does not provide a summary *per se*, it clearly expresses Vacarius's explanation of the hypostatic union in terms of the first, or *assumptus homo*, theory. Crucial to the identification of Vacarius with the ideas of Hugh of St Victor is his explanation of the notion of the absorption of the person in the incarnation.

The issue facing Vacarius and other theologians was whether the *assumptus homo* was a person. If He was, then the Word absorbed a person. This was a metaphysical non-sequitur, since there would then be a quaternity of persons in the Trinity; further, the notion of two persons co-existing in the Word would be akin to the heresy of Nestorianism, or its related theory, Adoptionism, in the

<sup>134</sup> 'De assumpto homine quod substantia sit ex anima et carne subsistens tam animalis quam hominis naturae proprietatibus subiecta, non autem divina, et quod homo sit persona, ipse tamen assumptus dicitur et non ipsa persona; et quod homo "Christus" et "Dominus gloriae" et "gigas geminae substantiae" duarum sint substantiarum nomina, et non "Deus", et ideo ex duplici substantia Christus esse una persona dicitur, et non Deus, non homo ita dicitur; et quod Deus vere et proprie inde est aliquid quia est homo': *Tractatus de assumpto homine*, §6, p. 163.

<sup>135</sup> Häring, despite noting this, made no suggestion that the passage was interpolated: 'The "Tractatus"', ed. by Häring, p. 163, n. 11. The suggestion of interpolation, however, cannot be dismissed entirely: the condensed language of the paragraph contrasts with that of the subsequent paragraphs; further, §6 seems to interrupt a discussion of 'perfect human nature' begun in §5, a topic which is taken up again in §7.



sense that the Word was adopting a person for the sake of the incarnation. Vacarius, therefore, sympathizes with the dissenters' difficulty with the union of the body and soul of man, for the reason that this union could conceivably constitute the *assumptus homo* as a 'person'; this, he concedes, is a most valid argument.<sup>136</sup> Vacarius deals squarely with the dissenters' use of a key authority in the christological debates, that of St Augustine of Hippo. He discusses Augustine's commentary on the Psalms, which emphasize the humanity of the *assumptus homo* itself, in such anthropomorphic phrases, as: 'This now pertains to temporality, to the *assumptus homo* taken up, who offered himself as a sacrifice for all', or, 'But you, oh Lord: He even calls God His Glory, that (man) whom God the Word thus took up at the same time so that with Him God is one', or, 'Into the man of the Lord whom the wisdom of God takes up'.<sup>137</sup> The dissenters have used Augustine sophistically, he argues, since they exploit the multivalence of the Latin language in failing to adequately differentiate the subject and the object of the verb 'to take up' (*suscipio*).<sup>138</sup> These dissenters imply the *assumptus homo* is a person by the emphatic pronoun *ille* placed before *homo*.<sup>139</sup>

<sup>136</sup> 'Adversus hoc autem praedictam nobis obicietis rationem, silicet quod persona sit assumpta, si assumptus sit homo ille *qui pro nobis interpellat*, cum ipse persona sit. Haec est enim validissima ratio': *Tractatus de assumpto homine*, §15, p. 165; cf. 'urgentissimam rationem': *Tractatus de assumpto homine*, §2, p. 162.

<sup>137</sup> 'Hoc iam temporaliter secundum susceptum hominem qui sacrificium esse obtulit pro omnibus sacrificiis *qui etiam interpellat pro nobis*': *Tractatus de assumpto homine*, §13, p. 165; cf. Augustine, *Enarrationes in Psalmos*, ed. by D. Eligius Dekkers and Ioannes Fraipont, Corpus Christianorum, Series Latina, 38 (Turnhout: Brepols, 1956), 2, 8, p. 5. 'Tu autem Domine: Gloriam suam Deum dicit etiam ille quem sic suscepit Deus Verbum ut simul cum illo Deus fieret': *Tractatus de assumpto homine*, §13, p. 165; cf. Augustine, *Enarrationes in Psalmos*, ed. by Dekkers and Fraipont, 3, 4(3), p. 8. 'In ipsius autem dominici hominis quem suscepit Dei sapientia etc': *Tractatus de assumpto homine*, §13, p. 165; cf. Augustine, *Enarrationes in Psalmos*, ed. by Dekkers and Fraipont, 4, 2(20), p. 14.

<sup>138</sup> 'Miror quod philosophia vestra huiusmodi complexionum cavillationes, quae per brevissimas mutationes ab evidenter veris ad evidenter falsa perducunt, et vitia ignorat': *Tractatus de assumpto homine*, §15, p. 165.

<sup>139</sup> 'Dicitis enim vos: si homo *ille* persona est, qui assumptus est, ergo persona assumpta est': *Tractatus de assumpto homine*, §15, p. 165, n. 22 [emphasis added to indicate superscript above 'ille'].

## Personhood

Vacarius turns to the ‘juridical’ notion of person to explain the unity of personhood in the *assumptus homo* position. According to this ‘elegant and catholic tradition’, a ‘person could assume both a person and a nature’.<sup>140</sup> Taken from Faustus of Riez’s *De spiritu sanctu*, and more recently from the *Apologia de Verbo Incarnato*, this ‘legal expression’ did not allow a nature to assume a nature, but permitted ‘a person to assume a person’.<sup>141</sup> To put it another way, ontologically inferior beings could not absorb superior ones. In answer to the question, then, as to whether the *assumptus homo* was a person, Vacarius states that he would say the person of the *assumptus homo* was absorbed in the very moment of His own incarnation, even if He possessed the person of man before He was assumed.<sup>142</sup> Thus, simultaneously in the incarnation, both a man and a person would begin to be God, with the Word absorbing, not the person itself, but the man.<sup>143</sup> For example, Vacarius notes, a gem inserted into a candelabra or

<sup>140</sup> ‘[Q]uoniam persona, sicut eleganter et catholice traditum est, personam et naturam consumere potest’: *Tractatus de assumpto homine*, §16, p. 166.

<sup>141</sup> cf. ‘Natura naturam non consumit, sed persona personam, quia nomen iuris est’: Faustus of Riez, *De Spiritu sanctu*, 2,4, in *Fausti Reiensis: Praeter sermones pseudo-eusebianos opera*, ed. by A. Engelbrecht, *Corpus Scriptorum Ecclesiasticorum Latinorum*, 21 (Vienna: Tempus, 1891), p. 139; ‘Unde Scriptum est: *Natura naturam non consumit, sed persona personam, quia nomen iuris est*’: *Apologia de verbo incarnato*, 24, in ‘The So-called *Apologia*’, ed. by Häring, p. 121. Häring stated that the *Apologia*, composed around 1160, came too late for Vacarius to use in the present treatise; this is on the basis of his providing a date of 1150–55 for the treatise, considerably earlier than my date of 1164–70: ‘The “Tractatus”’, ed. by Häring, p. 148.

<sup>142</sup> ‘Huius itaque viae vestigiis ductus, personam assumpti hominis in ipsa eius assumptione consumptam dicerem, etiamsi antequam assumeretur personam hominis habuisset’: *Tractatus de assumpto homine*, §17, p. 166. Häring translates the last part of this passage as follows: ‘I should call the person of the Assumed Man absorbed precisely at the moment when He was assumed, *provided* He had been a person prior to that moment’: ‘The “Tractatus”’, ed. by Häring, p. 155 [my emphasis added].

<sup>143</sup> ‘Ceterum in ipsa sui assumptione simul et homo et persona coepit esse et Deus cum Verbo assumente non personam ipsam sed hominem’: *Tractatus de assumpto homine*, §17, p. 166. Vacarius also elaborates this juristic notion of person elsewhere: ‘Pesona enim praeogativae et dignioris cuiusdam proprietatis nomen est’: *Tractatus de assumpto homine*, §37, p. 173; ‘Duo igitur exiguntur ut substantia aliqua “persona” dicatur’: *Tractatus de assumpto homine*, §38, p. 174; ‘confusione in eadem persona unitae fuerint [...] praeogativa factus sit, per quam unionem cum Deo Verbo eadem dicitur esse persona’: *Tractatus de assumpto homine*, §32, p. 172.

a patch of purple sewn onto a cloak, each respectively lost the right (*ius*) of their 'substantial discreteness' (*substantialis discretio*) [i.e., their ability to be substances], but retained their own natures. Those species of object which did not have 'personal discreteness' [that is, the ability to be 'persons'], therefore, were absorbed (*consumere*) by a superior object.<sup>144</sup>

In this formulation of the notion of person, Vacarius can be identified with other adherents of the *homo assumptus* position, in commonly holding that the *homo assumptus*, at the incarnation, becomes one with, or 'juristically dissolved' into, the *persona Verbi*.<sup>145</sup> The exemplar of this school, Hugh of St Victor, for example, held that, in Christ, the divine Word was a person and, by his union to the Word, the *assumptus homo* became one and the same 'person'.<sup>146</sup> Accordingly, for Hugh, 'anyone who denied that the *assumptus homo* was a person, denied that man was assumed into the person'.<sup>147</sup>

<sup>144</sup> *Tractatus de assumpto homine*, §17, p. 166. Walter of St Victor also likened the union to a crown which united gold and gem, so that neither the gem was changed into gold, nor the gold into a gem. But this analogy was inadequate because neither did the gold share in the properties of the gem, nor did the gem share in the properties of the gold, as God shared in the human properties and man in the divine. Although the union of flesh and soul was a better analogy, it was still inadequate, as was that of the union between fire and coal; in fact there was nothing to be found in the universe like it. Walter of St Victor, *Sermones*, 21.6, in *Sermones ineditos*, ed. by Châtillon, pp. 181–82. Boethius had compared the union of man and God in the incarnate Christ with that of the gold and gems in a crown, in which examples neither element was changed: Boethius, *Contra Eutychen et Nestorium*, 7, in *Boethius: The Theological Tractates and the Consolation of Philosophy*, ed. and trans. by H. F. Stewart, E. K. Rand and S. J. Tester, The Loeb Classical Library (Cambridge, MA: Harvard University Press, 1973), pp. 72–129 (pp. 116–17); Colish, *Peter Lombard*, I, p. 403.

<sup>145</sup> It must be to this notion of person as a 'legal' term (as expressed by Faustus of Riez), that Stein mistakenly refers when commenting that Vacarius's treatment of the hypostatic union employed Roman civil law notions of possession, for there is no other passage in the treatise which deals with possession in such a way. Clearly the legal notion of person has no relevance to legal understandings of possession or any other legal concept: Stein, 'The Vacarian School', pp. 26–30.

<sup>146</sup> 'Ideo vero personam non assumpsit, quia caro illa et anima illa priusquam verbo unirentur in personam, non erant unita ad personam': Hugh of St Victor, *De sacramentis Christianae fidei*, 2.1, 9, in PL: 176, col. 394A; cf. 'Homo quippe, id est corpus et anima simul injuncta, persona esse habet, non tamen alia quam verbum, quia una persona homo et verbum': Hugh of St Victor, *De sacramentis Christianae fidei*, 2.1.11, in PL: 176, cols 411C–D.

<sup>147</sup> 'Qui ergo hominem assumptum negat personam esse, negat hominem in personam assumptum esse': Hugh of St Victor, *De sacramentis Christianae fidei*, 2.1.9, in PL: 176, col. 394B.

There is, in addition, a similarity in the two masters' understanding of the composition of person. Hugh had defined a person in the Platonic manner as soul; that is, that only by being united to the soul did the body become a person.<sup>148</sup> Vacarius, likewise, observes that, in the *triduum*, Christ's soul, on leaving the body at the moment of death, became a 'person' for the three days that his body was absent from the tomb; but it lost this right and prerogative of being a person at the moment of the resurrection, when it was absorbed by the body.<sup>149</sup> Personhood, explains Vacarius, no longer resided in the soul, but in the incarnate Christ.

In this explanation of the juridical notion of person, however, Vacarius answers an issue earlier raised: whether Christ's human soul was separable from his human body once both were assumed by the Word. Vacarius's answer is in the negative; they were not separable because they were united in the one person. Vacarius does not attempt any great originality on this point of difference with his anonymous interlocutor, B. Häring unfairly labels this recourse to Victorine theology as old-fashioned and indicative of a lack of theological knowledge: Vacarius, he noted, 'speaks the language of Hugh of St Victor some forty years after Hugh's death.'<sup>150</sup> In Vacarius's defence, however, Guareschi notes that Vacarius's reliance on such theoretical cribs was far from unique; Robert of Melun and John of Cornwall equally shared such an approach. Indeed, opposing B and the other *moderni magistri* of his generation, necessitated a return to orthodox, if not conservative, theological language.<sup>151</sup>

<sup>148</sup> 'Sola anima a carne ad tempus divisa est, sed divinitas nec ab anima nec a carne separate est': Hugh of St Victor, *De sacramentis Christianae fidei*, 2.1.11, in PL: 176, col. 411D.

<sup>149</sup> 'Nam cum et anima cuiuslibet defuncti a corpore separata persona sit, in resurrectione tamen ipsius hominis integra quidem natura animae assumetur. Ius autem et praerogativa personatus ipsius animae peribit et consumetur': *Tractatus de assumpto homine*, §17, p. 166; see 'The "Tractatus"', ed. by Häring, p. 154.

<sup>150</sup> 'The "Tractatus"', ed. by Häring, p. 149.

<sup>151</sup> Guareschi, 'Gli incontri', p. 406. Guareschi additionally described Vacarius's notion of person as 'relational', rather than ontological, in that it related to an aspect of being, rather than being itself: 'Gli incontri', p. 407. This relational notion of person adopted by Vacarius was different to the 'ontologically comprehended' conception of person developed by Hugh of St Victor: Nielsen, *Theology and Philosophy*, p. 213.

## Two Substances

Returning to Vacarius's positive explanation of the hypostatic union in the rubric cited above, it is equally clear that he demonstrates a progression and advancement from Hugh's notion of person. His use of the terms 'nature'/'form' and 'substance' evidence familiarity with the Gilbertian commentaries on Boethius, which Hugh's *De sacramentis* did not.

Similar to concerns that the *assumptus homo* might be a person, Vacarius is mindful of the argument of some theologians that, if Christ in the incarnation were two substances, he would therefore be two persons. This identification of person and substance was common to twelfth-century theologians, such that any change of substance for them constituted a change of person.<sup>152</sup> Vacarius supports the notion that Christ is two substances: 'Assuredly Christ, since He is *one person from a dual substance*, although these terms truly are said to be of two substances, namely of a divine and human (substance)'.<sup>153</sup> It cannot readily be said that Christ is two substances (divine and human), Vacarius warns, since, in so stating it we may somehow imply the unity or change (*confusio*) of each of these substances into the other.<sup>154</sup> In addition, man did not become Christ through the origin of his substance, but through his assumption into the person. For this reason, although Christ is described as two substances, Vacarius prefers to say that 'Christ is *one person from two substances*'.<sup>155</sup> In contrast, God is seen as a word expressing one divine nature or substance only.<sup>156</sup> Vacarius compares this union of God and man in the Word (with a recognition of the distinctive substances of each) with the composition (*compositio*) of soul and flesh in a man: although a man is called 'just' or 'black', this attribute accords to his mind/soul or his

<sup>152</sup> Colish, *Peter Lombard*, I, pp. 91–154.

<sup>153</sup> 'Christus autem cum sit *ex duplici substantia una persona* vere tam ipse quam eius nomina duarum dicuntur esse substantiarum, scilicet divinae atque humanae': *Tractatus de assumpto homine*, §25, p. 169, citing Claudianus Mamertus, *De statu animae*, I, 3, 8, in PL: 53, col. 705B.

<sup>154</sup> 'Non tamen expedite dicetur quod Christus sit duae substantiae, divina scilicet et humana, ne unitatem vel confusionem ipsarum substantiarum in Christo quodammodo fateri videamur tali propositione': *Tractatus de assumpto homine*, §25, p. 169.

<sup>155</sup> 'Homo enim non per originem substantiae se per assumptionem personae factus est Christus. Hac ergo ratione *ex duplici substantia una persona* est Christus': *Tractatus de assumpto homine*, §25, p. 169.

<sup>156</sup> '[U]t recte dicatur non "Deus", nomen divinae naturae': *Tractatus de assumpto homine*, §26, p. 169.

body respectively. In the same way, Christ is called ‘eternal and immortal God’ in respect of His divinity, and the ‘mortal and crucified man’ according to his humanity.<sup>157</sup> It is noteworthy that Hugh of St Victor had used this same analogy.<sup>158</sup> Nevertheless, as Vacarius later observes, by substance Hugh meant that matter was the ‘substrate’ of nature or form.<sup>159</sup>

The *habitus* theory, as set out by the Lombard, described Christ as subsisting of, and by virtue of, two natures, but clarified that Christ was merely of one nature substantially, and related to the divine nature according to the Aristotelian category of *habitus*.<sup>160</sup> Some writers linked to this position rejected the notion of two substances in Christ, as this would mean that the name *Christus* would be attributed to two substances and would therefore be a common noun (*nomen appellativum*), not a proper noun (*nomen proprium*).<sup>161</sup> But Gilbert and several theologians from Gilbert’s school also denied that Christ was two substances.<sup>162</sup> Gilbert had argued that there were not two subsistents, or substances, in Christ because this would fall into the error of Nestorianism.<sup>163</sup> Accordingly, theologians who were adherents of both the second and third theories may have shared the view that Christ was not two substances.

<sup>157</sup> ‘Et sicut ex anima et carne per compositionem unus est homo ita ex duplici substantia per unionem Dei et homini unus est Christus’: *Tractatus de assumpto homine*, §26, pp. 169–70.

<sup>158</sup> ‘[V]el sicut in homine anima quidem et caro simul homo dicitur, nec anima per se sola homo dicitur, nec caro per se homo dicitur, sic in Christo Deus quidem et homo simul Christus dicitur’: Hugh of St Victor, *De sacramentis Christianae fidei*, 2. 1. 11; in PL: 176, col. 405B.

<sup>159</sup> ‘Substantia [...] materia est naturae seu formae subiecta.’: *Tractatus de assumpto homine*, §33, p. 172; cf. ‘Ex quibus verbis datur intellegi quod materia [...] sit substantia ipsi formae, quam catholici “naturam” vocant, subiecta’: *Tractatus de assumpto homine*, §34, p. 172. Häring notes two other contemporary uses of this definition, as follows: (1) ‘Substantia, ut a substando dicitur, proprie est materia’: *Tractatus de Trinitate*, in ‘A Short Treatise on the Trinity from the School of Thierry of Chartres’, ed. by Nikolaus M. Häring, *Mediaeval Studies*, 18 (1956–57), 125–34 (p. 129); (2) ‘Ubi (substantia) dicitur a substando, sic a Graecis dicitur hypostasis, a nobis vero substantia proprie. Et in hac acceptione convenit materiae, quae habet substare’: pseudo-Bede, *Commentary on Boethius*, in PL: 95, col. 410A. See ‘The “Tractatus”’, ed. by Häring, p. 159.

<sup>160</sup> Peter Lombard, *Sententiae* 3. d.7 c.3, s.59, *Sententiae in IV libris distinctae*, ed. by Brady, I, p. 589; Nielsen, *Theology and Philosophy*, p. 262.

<sup>161</sup> See Nielsen, *Theology and Philosophy*, p. 335, n. 208.

<sup>162</sup> *Ibid.*, pp. 177–79, n. 59.

<sup>163</sup> Gilbert of Poitiers, *Commentarius*, ed. by Häring, pp. 263, 295; Nielsen, *Theology and Philosophy*, p. 166.

Whether Vacarius's exposition of Christ as having two substances is the paradigmatic position held by proponents of the *assumptus homo* theory is a matter of difference between Häring and Nielsen. Häring characterized the *assumptus homo* position as positing the existence of only one substance in Christ, since, if it supported the notion of two substances, this would lead to Nestorianism.<sup>164</sup> Nielsen, in contrast, argued that this school acknowledged that Christ was two substances, without the censure of Nestorianism necessarily applying.<sup>165</sup> He cites John of Cornwall,<sup>166</sup> the *Allegoria super Vetus et Novum Testamentum*,<sup>167</sup> and the *Apologia de Verbo incarnato* as positing two substances.<sup>168</sup> On the other hand, other proponents of the *assumptus homo* position, namely Robert Pullen,<sup>169</sup> the *Summa sententiarum*,<sup>170</sup> and Robert of Melun,<sup>171</sup> held that there were three substances, while Hugh of St Victor himself did not directly consider whether there were two substances in Christ.<sup>172</sup>

## Two Natures

Vacarius explains the two natures in the incarnate Christ, by drawing on the authority of Boethius. For Boethius, Vacarius claims, *ille homo* was God 'because He was assumed by God', and at the same time man 'because he was man by his nature' in the incarnation.<sup>173</sup> How, then, did the concept of nature differ from

<sup>164</sup> Häring, 'The Case of Gilbert', pp. 28, 31, 32, n. 66.

<sup>165</sup> Nielsen, *Theology and Philosophy*, p. 250, n. 41; p. 329, n. 192.

<sup>166</sup> John of Cornwall, *Eulogium*, in 'The "Eulogium"', ed. by Häring, pp. 258, 266, 279, 281, 296, 299, and cited in Nielsen, *Theology and Philosophy*, p. 329, n. 192.

<sup>167</sup> *Allegoriae*, 6, in PL: 175, col. 881A.

<sup>168</sup> *Apologia de verbo incarnato*, 45, in 'The So-called *Apologia*', ed. by Häring, p. 128.

<sup>169</sup> Robert Pullen, *Sententiarum*, in PL: 186, cols 787AB, 787C, 788A.

<sup>170</sup> 'In Christo enim duae sunt naturae, divina et humana; et tres substantiae: caro, anima et verbum; sed non duae personae': *Summa sententiarum*, 1.15, in PL: 176, col. 70C–D.

<sup>171</sup> Robert of Melun, *Abbreviatio*, 61 (*Sententiae*, 2.2.109), cited in Nielsen, *Theology and Philosophy*, p. 250.

<sup>172</sup> Hugh of St Victor, *De sacramentis Christianae fidei*, 2.1 11, in PL: 176, cols 402D–403A, 406C.

<sup>173</sup> 'Cum aperte Boethius exprimat quod ille qui homo est, ideo Deus est quoniam a Deo fuit assumptus et quod idem *homo ex natura* est homo, *Deus autem ex assumptione naturae*: sicut Deus ex natura Deus est, homo vero est ex assumptione': *Tractatus de assumpto homine*, §31, p. 171.

substance? Following Boethius's definition of nature or form as 'the specific difference giving form to a particular thing (*Natura est unamquamque rem informans specifica differentia*) or as 'the specific property of some substance' (*Natura est cuiuslibet substantiae specificata proprietas*),<sup>174</sup> Vacarius notes that it makes matter or substance its 'substrate' (*Substantia [...] materia est naturae seu formae subiecta*).<sup>175</sup> Form or nature itself, as Boethius noted,<sup>176</sup> could not be a substrate.<sup>177</sup> This was despite form or nature 'appearing' to take up the human properties, when, in fact, human matter or substance took them up.<sup>178</sup> *Humanitas* was an example of a nature; it 'informed' human substance to make a man.<sup>179</sup>

In his discussion, Vacarius clarifies that Christ's 'substance' is necessarily different from, and indeed a substrate to, His 'nature'. In so doing, he identifies a crucial error in the dissenters' position: B and his followers erroneously believe that in Christ the body and soul are one nature.<sup>180</sup> In stating that Christ was one nature or nothing, Vacarius suggests, the dissenters are making the same error as Nestorius.<sup>181</sup>

Both the subsistence and *habitus* theories opposed the notion of there being two natures in Christ, the former on the basis of Gilbert's preference for referring

<sup>174</sup> *Tractatus de assumpto homine*, §33, p. 172.

<sup>175</sup> *Tractatus de assumpto homine*, §33, p. 172; cf. 'Ex quibus verbis datur intellegi quod materia [...] sit substantia ipsi formae, quam catholici "naturam" vocant, subiecta': *Tractatus de assumpto homine*, §34, p. 172.

<sup>176</sup> Cf. Boethius, *De Trinitate*, 2, in *The Theological Tractates*, ed. and trans. by Stewart, Rand, and Tester, pp. 2–31 (pp. 10–13).

<sup>177</sup> *Tractatus de assumpto homine*, §33, p. 172; cf. Boethius, *De Trinitate*, 2, in *The Theological Tractates*, ed. and trans. by Stewart, Rand, and Tester, pp. 10–13.

<sup>178</sup> 'Natura est unamquamque rem informans specifica differentia': Boethius, *Contra Eutychem et Nestorium*, 1, in *The Theological Tractates*, ed. and trans. by Stewart, Rand, and Tester, p. 80; in the same text, cf. 'quod materia quae suscipit accidentia sit substantia ipsi formae, quam catholici "naturam" vocant, subiecta (p. 80); Vacarius, *Tractatus de assumpto homine*, §34, p. 172; and see also 'natura enim ut supra diximus, hic accipitur quae substantiam sibi subiectam informat': *Tractatus de assumpto homine*, §36, p. 173. Häring observed that Vacarius's understanding that this conception of form and substance was the teaching of Boethius was incorrect: 'The "Tractatus"', ed. by Häring, p. 159.

<sup>179</sup> 'Natura enim, ut supra diximus, hic accipitur quae substantiam sibi subiectam informat ut humanitas quae hominem facit': *Tractatus de assumpto homine*, §36, p. 173.

<sup>180</sup> *Tractatus de assumpto homine*, §34, p. 172.

<sup>181</sup> *Tractatus de assumpto homine*, §34, p. 173, n. 73.



to the subsistence in each of man and God, rather than two natures,<sup>182</sup> while the latter theory denied that there was any human nature in Christ.<sup>183</sup> But Vacarius's description of the two natures is found elsewhere in the writings of proponents of the *assumptus homo* theory, most notably in the work of Walter of St Victor,<sup>184</sup> Robert Pullen,<sup>185</sup> the *Apologia de Verbo incarnato*,<sup>186</sup> the work of Richard of St Victor,<sup>187</sup> and the *Allegoriae super Vetus et Novum Testamentum*<sup>188</sup> (although they did not discuss the distinction between substance and nature), as well as that of Achard of St Victor,<sup>189</sup> the *Allegoriae super Vetus et Novum Testamentum*,<sup>190</sup> Robert of Melun,<sup>191</sup> and John of Cornwall.<sup>192</sup> Some of the pre-mid-twelfth-century followers did not specifically consider two natures in Christ or even distinguish substance from nature in Christ, including Hugh of St Victor<sup>193</sup> and

<sup>182</sup> Nielsen, *Theology and Philosophy*, p. 166; cf. Gilbert of Poitiers, *Commentarius*, ed. by Häring, pp. 263, 295.

<sup>183</sup> Colish, 'Christological Nihilianism', pp. 149–52; Roland of Bologna, *Sententiae*, in *Die Sentenzen Rolands*, ed. by Gietl, pp. 175–77.

<sup>184</sup> '[...] non naturae in naturam uersibilitate, sed ineffabili duarum naturarum unione': Walter of St Victor, *Sermones*, 7.4, in *Sermones ineditos*, ed. by Châtillon, p. 59, but see generally sermons 2, 7, 8, and 21.

<sup>185</sup> Robert Pullen, *Sententiarum*, in PL: 186, cols 786D, 788D, 789D; Nielsen, *Theology and Philosophy*, p. 234, n. 192.

<sup>186</sup> 'Ecce Augustinus prohibet dubitare et jubet firmissime tenere in Christo duas esse naturas, divinam scilicet secundum quam dicit *Ego et Pater unum sumus*': *Apologia de verbo incarnato*, 2, in 'The So-called *Apologia*', ed. by Häring, p. 110.

<sup>187</sup> Richard of St Victor, *De Trinitate*, 3, 2, in PL: 196, cols 887C–992 (col. 916D). See also Chase, *Angelic Wisdom*, p. 105.

<sup>188</sup> *Allegoriae*, 6, in PL: 175, col. 881A.

<sup>189</sup> 'In Christo duae naturae sunt quarum utraque persona dici potest per se; non tamen duae sunt personae, sed una in naturis duabus [...] Propter pluralitem naturarum, iam non ibi exigitur pluralitas personarum': John of Cornwall, *Eulogium*, in PL: 199, col. 1053.

<sup>190</sup> *Allegoriae*, 6, in PL: 175, col. 881A.

<sup>191</sup> See the introduction to *Quaestiones de divina pagina*, in *Oeuvres de Robert de Melun*, ed. by Martin and Gallet, I, pp. xxii–xxiii.

<sup>192</sup> 'In Christo duae naturae sunt quarum utraque persona dici potest per se; non tamen duae sunt personae, sed una in naturis duabus [...] Propter pluralitem naturarum, iam non ibi exigitur pluralitas personarum': John of Cornwall, *Eulogium*, in PL: 199, col. 1053.

<sup>193</sup> Hugh of St Victor, *De sacramentis Christianae fidei*, 2.1.11, in PL: 176, cols 402D–403A.

Gerhoch of Reichersberg.<sup>194</sup> The *Summa sententiarum*, however, like Vacarius, distinguished substance and nature, but held that there were three substances (flesh, soul, and the Word),<sup>195</sup> while Achard of St Victor distinguished substance and nature, but held that there was only one substance in Christ.<sup>196</sup>

Vacarius clarifies the distinction between nature and person for his dissenting interlocutor. By making the mistake of identifying these two, Vacarius warns, the dissenters will fall into the same errors made by Nestorius and Eutyches. Thus, for Eutyches, who denied a human person in Christ, the existence of a human nature, or *humanitas*, meant that, in fact, there was no nature; for Nestorius, the presence of *humanitas* meant two persons.<sup>197</sup> Further, the juridical notion of person, as a worthier and more singular attribute, distinguishes it from substance, and nature.<sup>198</sup> Vacarius compares the ‘personal discreteness’ or ‘individuality’ (*personalis discretio*) of men and angels with the ‘substantial discreteness’ (*substantialis discretio*) of animals.<sup>199</sup> In support, he cites Boethius’s use of the word *hypostasim* to signify persons, but not animals, since the former

<sup>194</sup> ‘In libro *De Trinitate* [2, 5, 9] formam i.e. naturam humanam dicit [Augustinus] esse personam Filii: Forma, inquit, illa suscepti hominis Filii persona est, non etiam Patris’: Gerhoch of Reichersberg, *Eulogium*, c. 19, in PL: 199, col. 1082C.

<sup>195</sup> ‘In Christo enim duae sunt naturae, divina et humana; et tres substantiae: caro, anima et verbum; sed non duae personae’: *Summa sententiarum*, I.15, in PL: 176, cols 70C–D.

<sup>196</sup> ‘Est enim Deus et homo, habens unitatem naturalem cum Deo Patre, cum quo unum in natura; habet et unitatem cum Virgine matre et ceteris hominibus, cum quibus et ipse unum in natura humanitatis. Est enim homousion Patri, et est homousion matri, id est utrique consubstantialis’: Achard of St Victor, *Sermo 1 in natali Domini*, in *Sermones inédits*, ed. by Châtillon, p. 24 (translation from: *Achard of St Victor. Works*, trans. by Feiss, p. 97). Châtillon noted that the phrase *homousion Patri et matri*, which Feiss called Achard’s notion of ‘double consubstantiality of the Word incarnate’, was the teaching of John Cassian against Nestorianism and Monophysitism, and was set out by the Council of Chalcedon and Pope Leo the Great: *Enchiridion symbolorum*, ed. by Denzinger and Schönmetzer, p. 148; Leo the Great, *Epistola 31 ad Pulchriam Augustam*, in PL: 54, col. 792AB; Châtillon, ‘Achard de St Victor’, p. 317.

<sup>197</sup> ‘Uterque autem error ex eodem fonte esse prolabitur, scilicet quasi non possit duplex esse natura quin persona fieret duplex’: *Tractatus de assumpto homine*, §35, p. 173.

<sup>198</sup> ‘Nec tamen inde sequitur quod talis substantia persona sit. Persona enim praerogativae et dignioris cuiusdam proprietatis nomen est’: *Tractatus de assumpto homine*, §37, p. 173.

<sup>199</sup> ‘Cur enim aliorum animalium discretio substantialis ut huius vel illius equi vel bovis personalis non est sicut cuiuslibet hominis vel angeli nisi propter rationis praerogativam quae in his praecellit?’: *Tractatus de assumpto homine*, §37, p. 173.

were 'more excellent'.<sup>200</sup> There are two prerequisites for a person, Vacarius notes, rational nature (*natura rationalis*) and substantial discreteness (*substantialis discretio*).<sup>201</sup> By way of illustration, Vacarius observes that, in the incarnation, the rational soul when fused to the body has no *substantialis discretio*, and so, on that account, is not yet a person; likewise, the substance of the *assumptus homo*, in ceding to the worthier substance (that is, the divine substance), cannot retain its 'personal discreteness' (*personalis discretio*), and so is not a person either.<sup>202</sup> Given this example and Vacarius's previous definitions of form or nature as the *specifica differentia* or *specificata proprietas* of a substance, nature, then, is constitutive of, but not identifiable with, person in this metaphysical sense.

### The Erroneous View that Christ is One Divine Substance

Against Vacarius's positive claims that Christ as man was two substances and two natures, the dissenters argued instead that Christ was one divine substance only, not a human substance. Thus, when Vacarius asks rhetorically what the substance was that constituted the baby Jesus whom the three wise men adored, he paraphrases the dissenters' reply that Jesus was a divine substance, not a human substance.<sup>203</sup> Vacarius disagrees with this statement vehemently; in fact,

<sup>200</sup> 'Unde Boethius in libro *De Duabus naturis Christi: Quare autem de irrationalibus animalibus Graecus hypostasim non dicat, haec ratio est quoniam nomen hoc melioribus applicatum est ut aliquid quod est excellentius*: *Tractatus de assumpto homine*, §37, p. 174; cf. Boethius, *Contra Eutychen et Nestorium*, 4, in *The Theological Tractates*, ed. and trans. by Stewart, Rand, and Tester, pp. 90–91.

<sup>201</sup> '[...] duo igitur exiguntur ut substantia aliqua "persona" dicatur, scilicet natura rationabilis et substantialis discretio': *Tractatus de assumpto homine*, §38, p. 174; cf. 'est enim persona ut dictum est naturae rationalibus individua substantia' ('for Person, as has been said, is the individual substance of a rational nature'), Boethius, *Contra Eutychen et Nestorium*, 1, in *The Theological Tractates*, ed. and trans. by Stewart, Rand, and Tester, pp. 80–81. Compare, also, Richard of St Victor's more sophisticated explanation of 'an individual existence of a rational nature': Richard of St Victor, *De Trinitate*, 4. 23, in PL: 196, col. 188.

<sup>202</sup> *Tractatus de assumpto homine*, §38, p. 174.

<sup>203</sup> 'Unde quaerenti mihi: Cum substantia fuerit infans ille quem magi adoraverunt, quae substantia fuerit, responderunt quidam quod divina fuerit substantia et non humana': *Tractatus de assumpto homine*, §4, p. 162; cf. 'Asserunt ergo Christum unam solam substantiam sive naturam vel formam fuisse, scilicet divinam, non humanam': *Liber contra multiplices et varios errores*, §32, in *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 576. Hereafter the text will be cited as '*Liber contra*'.

it was just this assertion and its implications which made him write his own treatise in the first place.<sup>204</sup> In a paragraph summarizing his treatise, he states that he is inquiring into the substance, subsisting from soul and flesh in the *assumptus homo*, and ascertaining which is not a divine substance, and which is man.<sup>205</sup> Christ, therefore, has two substances in the analysis of Vacarius: divine and human. The assertion that the incarnate Christ was a divine substance, therefore, can only confirm that B and his fellow masters can be linked with the *habitus* theorists.<sup>206</sup> Further, it distinguishes them from the subsistence theory, which posited the presence of both divinity and humanity in Christ.

In response, Vacarius asserts that Christ as man had a human substance, indeed He was a 'perfect man': 'there was a union such that from these [i.e., body and soul] there was a single thing subsisting, [namely] a man of perfect human substance — just like any other man'.<sup>207</sup> For, Vacarius argues, if Christ was not a perfect man and had a divine nature only, how could He support or take up human accidents or properties? Just as the substance of Christ in its divinity was perfect when it absorbed man and remained forever immutable and unchangeable, thus that same substance of Christ in its humanity was perfect and acted as a substrate to the accidents of its own human nature in respect of qualities, actions, and passions, both of its own human nature and an animal nature.<sup>208</sup> How else were human properties, such as laughing, weeping, and speaking, or the animal properties, such as eating and drinking, 'taken up' by the

<sup>204</sup> 'Haec et similia induxerunt me et impulerunt ab scribendum': *Tractatus de assumpto homine*, §4, p. 162.

<sup>205</sup> 'De assumpto homine quod substantia sit ex anima et carne subsistens tam animalis quam hominis naturae proprietatibus subiecta, non autem divine, et quod homo': *Tractatus de assumpto homine*, §6, p. 163.

<sup>206</sup> *Opinio Parisiensis*, fol. 110<sup>v</sup>, marginal gloss; cf. *Breves dies hominis*, fol. 55<sup>v</sup> (both cited in Nielsen, *Theology and Philosophy*, p. 319, n. 151).

<sup>207</sup> '[...] [F]uerit coniunctio ut ex eis unus subsistens fuerit homo substantiae humane perfectae sicut quibuscumque aliis homo': *Tractatus de assumpto homine*, §5, p. 163.

<sup>208</sup> 'Sicut ergo Christi substantia in divinitate perfecta in hominis assumptione semper immobilis et immutabilis mansit ita Christi eiusdem substantia in humanitate perfecta accidentibus humanae naturae propriae subiecta fuit ut qualitates, actiones, passionem tam humanae naturae propriae quam animalis naturae cognatae in ea fierent eisque afficeretur et eas exerceretur': *Tractatus de assumpto homine*, §4, p. 162; cf. 'Et cum Christi essent operationes tam divine nature quam humane, si queratur quid eas exercebat, respondebunt quod Christus ipse, id est persona Christi tam divinas quam humanas operationes perficiebat': *Liber contra*, §32, p. 576.

Word?<sup>209</sup> Thus, concludes Vacarius, citing the Athanasian creed, it is an 'everyday canon' and 'evident from the authorities' that Christ was 'Perfect God, perfect man, subsisting from both rational soul and human flesh'.<sup>210</sup>

Continuing this line of argument, Vacarius rhetorically asks if — as the dissenting masters believe — the only substances in Christ were God, soul, and flesh, what would serve as the substrate (*subsistere*) for the qualities, actions, and passions of His human nature? For in what would piety or justice inhere? The dissenters would have to reply: 'To the soul'. What of colour? The dissenters would attribute it to the body.<sup>211</sup> It is, therefore, the composition (*compositio*) of body and soul that allows both these attributes to inhere in the Christ man.<sup>212</sup> Vacarius regards this as a powerful argument which ought to put his opponents to shame.<sup>213</sup>

What makes Christ a perfect man, continues Vacarius, is *humanitas*, that human form or nature in Christ. The dissenters' error lay in their misunderstanding of *humanitas* as a separate body and soul in the *assumptus homo*, rather than as constituted from these two (i.e., body and soul) as a single

<sup>209</sup> *Tractatus de assumpto homine*, §8, pp. 163–64.

<sup>210</sup> '[M]aiorum auctoritates evidenter docere quod etiam in canone quotidiano fidei nostrae exprimitur apertissime his verbis: *Perfectus Deus, perfectus homo, ex anima rationali et humana carne subsistens*': *Tractatus de assumpto homine*, §9, p. 164; cf. *Enchiridion symbolorum*, ed. by Denzinger and Schönmetzer, no. 76. See also 'Quare sicut supra diximus *perfectus fuit homo ex anima rationali et humana carne subsistens*': *Tractatus de assumpto homine*, §13, p. 165; and 'Athanasius cum dixisset: Dei Filius Deus est et homo, addidit postea: *Perfectus deus, perfectus homo [...]* Oculis itaque patet quod cum proprietates illae, scilicet comedendi, bibendi, essent in Christo quod animalis natura esset in eo, ut esset animal': *Liber contra*, §32, p. 576.

<sup>211</sup> 'Cum itaque secundum vos nulla in Christo fuerit substantia, quae non sit vel Deus vel anima vel caro, cui earum animalis et hominis proprietates attribuetis? [...] Si autem de motu iustitiae et pietatis interrogavero, soli animae Christi eum incunctanter assignabitis': *Tractatus de assumpto homine*, §10, p. 164; cf. 'Et cum Christi essent operationes tam divinae naturae quam humanae si quaeratur quid eas exercebat, respondebunt quod Christus ipse, i.e. persona Christi tam divinas quam humanas operationes perficiebat': *Liber contra*, §32, p. 576.

<sup>212</sup> 'In ergo proprietatibus, quae ex compositione corporis et animae procedunt': *Tractatus de assumpto homine*, §11, p. 164; cf. '[H]umana vero natura absque solita compage suae substantiae accidentia sua, nescio quomodo, portat': *Tractatus de assumpto homine*, §12, pp. 164–65.

<sup>213</sup> 'Erubescat ergo vestra philosophia has proprietates et ceteras absque subiecto i.e. substantia animata sensibili tribuere Christo nisi talem ei concedat substantiam': *Tractatus de assumpto homine*, §11, p. 164.

*aliquid* which is the substance or nature of man.<sup>214</sup> Further, their mistake lay in attributing these human attributes to the *person* of Christ, rather than His substance; this was impossible because of Boethius's truism that forms could not take up the accidents (only substrate matter could).<sup>215</sup> Accordingly, Vacarius appears to identify the person with the form/nature of Christ, applying the same 'rule' to each. If Christ were indeed merely a divine nature, He was without matter or substance, and so could not take up the accidents.<sup>216</sup>

Vacarius ends the treatise by concluding that, despite the tricks and deceptions of his opponents, it is 'more than manifest' that his reasoning demonstrates that Christ was a perfect man,<sup>217</sup> not only because He had a mind and body placed side by side, but because this rational mind and human flesh are substrate to *humanitas*, the 'specific difference or specific property or form of a single human substance'.<sup>218</sup> He thus asserts in this treatise, and again in the *Liber contra*, that Christ was a perfect man, meaning He had a human, as well as a divine, substance, and a united body and soul.<sup>219</sup> This view was shared by Robert of Melun,<sup>220</sup> John of Cornwall, the author of the *Apologia de Verbo incarnato*, Achard of St Victor,<sup>221</sup> and the writer of the *Allegoriae*.<sup>222</sup>

<sup>214</sup> 'Vestri autem soli magistri contra omnes ita in anima et corpore eam constituunt, ut non sit ex eis unum aliquid quod sit hominis substantia vel natura': *Tractatus de assumpto homine*, §39, p. 174.

<sup>215</sup> '[D]e persona haec dici ab eis respondetur et non de substantia aliqua, cum Boethius dicat quod nec ipsae formae accidentibus sint subiectae sed, dum materia ipsi formae subiectae suscipit accidens aliquod': *Tractatus de assumpto homine*, §39, p. 174.

<sup>216</sup> 'Multo ergo minus Christi persona in eo, quod ipsa est, aliquod accidens suscipere potest, cum sit forma i.e. divinitas sine materia': *Tractatus de assumpto homine*, §39, p. 174.

<sup>217</sup> '[S]it plus quam manifestum quod Christus perfectus sit homo': *Tractatus de assumpto homine*, §40, p. 175.

<sup>218</sup> '[N]on tantum in anima et carne sed etiam ex anima rationali et humana carne subsistens, cuius natura non est corpus et anima quod vestri fingunt quia non est substantia una vel plures sed est secundum catholicos unius substantiae humanae specifica differentia seu specificata proprietas seu forma quaedam, quae proprio nomine humanitas vocatur': *Tractatus de assumpto homine*, §40, p. 175.

<sup>219</sup> *Liber contra*, §32, p. 578.

<sup>220</sup> Robert of Melun, *Abbreviatio*, 77, 80, 85 (*Sententiae*, 2. 2. 132, fol. 229<sup>v</sup>; 2. 2. 138, fol. 230<sup>v</sup>; 2. 2. 146, fol. 232<sup>v</sup>), cited in Nielsen, *Theology and Philosophy*, p. 349, n. 248.

<sup>221</sup> *Apologia de verbo incarnato*, 'The So-called *Apologia*', ed. by Häring, pp. 120, 132; John of Cornwall, *Eulogium*, in 'The "Eulogium"', ed. by Häring, pp. 267–86, 274; *Sermones inédits*, ed. by Châtillon, p. 63. All cited in Nielsen, *Theology and Philosophy*, p. 349, n. 248; p. 316, n.

### Christ's Passibility According to Claudianus Mamertus

Continuing the idea that Christ as a man was perfect man, Vacarius turns to the problem of the crucifixion. How could Christ as divinity be impassible, yet at the same time, as man, suffer for man's sins? Here he turns to Claudianus Mamertus and his little-known work *De statu animae*, composed in Roman Gaul in the period 467–72 CE, in response to an 'unknown author', who was, in fact, Faustus of Riez.<sup>223</sup> Claudianus, says Vacarius, establishes the proposition that :

[I]n His very assumption at the same time He began to be both man and a person and God, with the Word absorbing [him] not as a person but as a man, namely the one who was crucified and suffered for us in such a way that He was not with or in God Himself but suffered together [with us].<sup>224</sup>

Vacarius then cites several lengthy passages from the *De statu animae*, purporting to explain the paradoxical impassibility and compassibility of the Godhead, particularly in light of Faustus's statement that 'God felt nothing by the sensation of suffering but did feel by the affect of suffering together (*compati*)'.<sup>225</sup> Against this, Claudianus asked, how did God 'suffer' if He did not 'feel'? For surely if one says 'He walks' and 'He walks together', this means 'walking together'? Or if someone says 'He died' and 'He died together', surely

139.

<sup>222</sup> The *Allegoriae* also proposes the notion that Christ was a man composed of body and soul in exactly the same way as other men, namely Peter: *Allegoriae*, in PL: 175, cols 751–923, 881B. See Nielsen, *Theology and Philosophy*, p. 316, n. 139, and the introduction to 'Die *Questiones super Epistolas S. Pauli* und die *Allegoria*', ed. by Landgraf, pp. 175–86.

<sup>223</sup> '[S]icut aperte Claudianus docet contra ignotum auctorem': *Tractatus de assumpto homine*, §17, p. 166. Häring identifies this author and work as Faustus of Riez, *Epistola* 20/3: 'The "Tractatus"', ed. by Häring, p. 149. Faustus had argued that the soul was corporeal because it was contained within the body. Claudianus responded that it was instead incorporeal, because God made man in his own image and likeness: Claudianus Mamertus, *De statu animae*, I. c.5, in PL: 53, col. 708.

<sup>224</sup> 'Ceterum in ipsa sui assumptione simul et homo et persona coepit esse et Deus cum Verbo assumente non personam ipsam sed hominem, qui pro nobis crucifixus et passus est ita ut non Deus cum ipso vel in ipso passus sit sed compassus': *Tractatus de assumpto homine*, §17, p. 166.

<sup>225</sup> 'Haec autem sunt verba ignoti auctoris: *Nil sensit Deus patientis sensu sed sensit compatientis affectu*': *Tractatus de assumpto homine*, §18, p. 166; cf. Claudianus, *De statu animae*, I. 3.1, in PL: 53, col. 701C.

each proves that they died? And if he suffers together, he suffers. Following this, if Christ suffered together (*compasso*) with us, Christ as divinity also suffered.<sup>226</sup>

Claudianus seems to suggest that when Christ was crucified His divinity suffered.<sup>227</sup> But Claudianus also affirmed that the divinity could not change, therefore it could not suffer.<sup>228</sup> In a ‘marvellous and incomprehensible manner’, he suggested, the Lord suffered, but the divinity did not; such a paradox was explicable by the hypostatic or personal union.<sup>229</sup> Claudianus supported this anthropomorphism with passages from Paul.<sup>230</sup> Claudianus concluded that this personal union is analogous to the union between body and soul in man: ‘just as the soul and body from the diverse substance is one man, so God and man from the diverse substance is one Christ’.<sup>231</sup> This is consistent with Vacarius’s understanding of the unity and duality of Christ. Thus, Claudianus is used by Vacarius to establish that compassibility can explain suffering in Christ’s human nature, while impassibility applies to His divine nature.

Vacarius’s use of this little-known patristic authority has puzzled commentators; Southern observed that Claudianus Mamertus was a

<sup>226</sup> ‘*Quomodo passus est, si non sensit? Numquid si quispiam dicat: Ambulat ille et ille coambulat, nonne coambulantem ambulare significat? Aut si quis aiat: Mortuus est ille et ille commortuus, nonne utrumque mortuum fuisses comprobat? Nam qui commoritur, utique moritur. Et qui compatitur, utique patitur. Passa est itaque, si compassa est, divinitas*’: *Tractatus de assumpto homine*, §18, p. 166; cf. Claudianus, *De statu animae*, 1. 3. 3, in PL: 53, col. 702D.

<sup>227</sup> ‘*Numquam Dominium gloriae crucifixissent in id uti voles ut haud dubie credatur quod ipsa divinitas queat affici si potuit crucifigi*’: *Tractatus de assumpto homine*, §19, p. 167; cf. Claudianus, *De statu animae*, 1. 3. 7, in PL: 53, col. 705A.

<sup>228</sup> ‘*Sed corrumpi divinitas non potest nec commutari. Ergo nec pati potest*’: *Tractatus de assumpto homine*, §19, p. 167; cf. Claudianus, *De statu animae*, 1. 3. 7, in PL: 53, col. 705A.

<sup>229</sup> ‘*Christus homo verus et Deus verus ex duplice substantia una persona et deus [et] homo et homo Deus est; idem gloriae Dominus, et non sit crucifixus pro inviolabili divinitate et sit crucifixus in homine pro unitate personae. Itaque miro et incogitabili modo passus est Dominus et non est passa divinitas*’: *Tractatus de assumpto homine*, §20, p. 167; cf. Claudianus, *De statu animae*, 1. 3.8, in PL: 53, col. 705B.

<sup>230</sup> *Tractatus de assumpto homine*, §20, p. 167; cf. Claudianus, *De statu animae*, 1. 3.8, in PL: 53, col. 705B; cf. Hebrews 4. 15 and Romans 8. 34.

<sup>231</sup> ‘*[...] ad unitatem personae perferendum est quia sicut anima et corpus ex diversa substantia unus est homo ita Deus et homo ex diversa substantia unus est Christus*’: *Tractatus de assumpto homine*, §20, p. 168; cf. Claudianus, *De statu animae*, 1. 3.9, in PL: 53, col. 706B.



commentator of 'no scholastic currency' in the later twelfth century.<sup>232</sup> Southern's dismissal of Claudianus is unfounded, however, since Abelard cited the *De statu animae* in his *Sic et non* when discussing God's incorporeality, Christ's passibility, and the separation of divinity and humanity in Christ.<sup>233</sup> There is also evidence that the text had some provenance in twelfth and thirteenth century manuscripts, particularly in Austria.<sup>234</sup> Furthermore, Vacarius's application of Claudianus's discussion of Christ's impassibility and compassibility to the hypostatic union reveals a novel development in christological argumentation at this time. The Lombard discussed the *propassus*, rather than *compassus*, of the soul in d.15 of the third book of his *Sententiae*, when considering Christ's saving work, but he removed it from the issue of the hypostatic union.<sup>235</sup> Peter Lombard's authorities were Augustine and Jerome, rather than Claudianus, and, significantly, the Lombard took aim at Hugh of St Victor, accusing the latter of attributing merely the 'similitude' of the Passion to the humanity of Christ, rather than its 'true' pain.<sup>236</sup> If the Lombard's accusation was true, Vacarius is clearly at pains to confirm his understanding of Christ's true suffering.

<sup>232</sup> Southern, *Scholastic Humanism: The Heroic Age*, p. 163; Guareschi simply did not deal with this aspect of the treatise.

<sup>233</sup> Peter Abelard, *Sic et non*, 1. q. 44, 2. q. 80, 3. q. 81, in *Sic et non: A Critical Edition*, ed. by Blanche B. Boyer and Richard McKeon (Chicago: University of Chicago Press, 1971–77), pp. 203, 295, 297.

<sup>234</sup> A search of the Convivium microfilms collection of manuscripts in the Hill Monastic Library of St John's University, Collegeville, for example, reveals five extant manuscripts containing Claudianus's *De statu animae* in Austrian libraries: Heiligenkreuz, Stiftsbibliothek, MS 77, fols 71a–105a; Admont, Stiftsbibliothek, MS 271, fols 117a–165; Vienna, Österreichische Nationalbibliothek, MS Palatinus 1030, fols 31a–99b; and Göttweig, Stiftsbibliothek, MS 33 (14), fols 99b–148a.

<sup>235</sup> '[I]n Christo nonnisi secundum propassionem': Peter Lombard, *Sententiae*, 3, d. 15, c. 2, n. 1, in *Sententiae in IV libris distinctae*, ed. by Brady, 1, p. 98.

<sup>236</sup> 'Sed quia nonnulli de sensu in passione humanitatis Christi male sensisse inveniuntur, asserentes similitudinem atque imaginem passionis et doloris Christum hominem pertulisse': Peter Lombard, *Sententiae*, 3, d. 15, c. 1, n. 9, in *Sententiae in IV libris distinctae*, ed. by Brady, 1, p. 96. Brady's note attributes this view to Hugh's *De sacramentis*, book 2, 1, c. 7.

## Speculative Grammar and Mutual Predication

Immediately following these extensive quotations from Claudianus, Vacarius forays into the little-understood area of ‘speculative grammar’.<sup>237</sup> He focuses on the following passage from Augustine’s Commentary on Psalms 2. 8:

Postula a me, et dabo tibi gentes hereditatem tuam. Hoc iam temporaliter secundum susceptum hominem, qui sacrificium sese obtulit pro omnibus sacrificiis, qui etiam interpellat pro nobis. (*Ask of me and I will give thee the Gentiles for thy inheritance.* This pertains no longer to eternity. It is addressed to Him who took upon Himself human nature, who offered Himself in sacrifice which replaces all other sacrifices, and *who also maketh intercession* for us).<sup>238</sup>

Vacarius abbreviates this to ‘*homo ille* qui pro nobis interpellet *est homo* (*that man* who intercedes for us *is a man*)’; he then observes that, as the subject in the sentence, the word *homo* refers to a person, while in the predicate of the sentence the same word *homo* signifies human nature. Thus, *ille homo* in the subject clause refers to a person, namely the divine substance, according to Augustine’s and Claudianus’s understanding of that passage.<sup>239</sup> But, Vacarius notes, Claudianus did not adopt this identification of word order and meaning: in one sentence ‘*Ille ergo Pontifex compatitur nobis qui et interpellat pro nobis*’ (‘Therefore that High Priest suffers for us and intervenes for us’), the subjectival *ille* signifies a human nature; whereas in the next sentence Claudianus states ‘*Ille vero qui interpellanti annuit*’ (‘Indeed He gave his assent to the intervention’), in which *ille* stands for divine nature.<sup>240</sup> Such multivalence prompts Vacarius to affirm

<sup>237</sup> The phrase ‘speculative grammar’ is employed in: ‘The “Tractatus”’, ed. by Häring, p. 155.

<sup>238</sup> Augustine, *Enarrationes in Psalmos*, ed. by Dekkers and Fraipont, 2, 8, p. 5, and translated in *St Augustine on the Psalms*, trans. by Scholastica Hebgin and Felicitas Corrigan (New York: Newman, 1960), p. 27. Vacarius cites this same Augustinian phrase at *Tractatus de assumpto homine*, §13, p. 165, and ‘[D]icatur quod homo ille qui pro nobis interpellet est homo’: *Tractatus de assumpto homine*, §15, p. 165.

<sup>239</sup> ‘Igitur secundum haec “homo ille” non humana sed divina substantia est ad quam ibi significandum refertur hoc nomen “homo”, cum aperte secundum Augustinum et Claudianum ad hominem referatur assumptum *qui pro nobis interpellat*’: *Tractatus de assumpto homine*, §21, p. 168.

<sup>240</sup> *Tractatus de assumpto homine*, §22, p. 168; cf. Claudianus Mamertus, *De statu animae*, 1.3.9, in PL: 53, cols 706C, 706D.

Claudianus's admonition that grammatical speculation is variously interpretable and therefore full of danger.<sup>241</sup>

Vacarius effectively dismisses the theory that meaning can be determined by word order:

And so, just as God is of one nature, i.e. divine, and so therefore the word 'God' is too, in this way man is also of one nature, i.e. human, and so the word 'man' is always of one nature, i.e. in the subject as well as in the predicate [of the sentence].<sup>242</sup>

In the same way, he adds, the words *Christus*, *Dominus gloriae*, and *gigas geminae substantiae* signify two substances.<sup>243</sup> Earlier in the treatise, Vacarius discusses this same Augustinian quotation in a different context. He accuses B and his fellow dissenters of surreptitiously altering it by implying that the *ille* who was assumed was a person, in itself a false proposition.<sup>244</sup> Vacarius therefore dismisses his earlier identification of semantics with word order, in favour of linking semantics and words themselves, or pronouns. Häring rationalized that Vacarius meant for context to determine the meaning of such words.<sup>245</sup>

A more likely explanation lies, I believe, in appreciating Vacarius's demonstrable understanding of twelfth-century innovations in medieval logic, and the related fields of semantics and speculative grammar. Chenu described the unique application of grammatical and logical theory to theology in the twelfth century as *critique grammaticale*.<sup>246</sup> Beginning with Peter Abelard and

<sup>241</sup> 'Cum igitur, sicut Claudianus ait, innumera sint quae super hoc dici possunt et in tanto pelago disputationis periculosae sint definitiones propter inundantes verborum profanitates et argumentorum latentes scopulos': *Tractatus de assumpto homine*, §22, p. 168; cf. 'Innumera sunt quae super hoc dici promptissimum sit': Claudianus Mamertus, *De statu animae*, 1.3.9, in PL: 53, col. 706D.

<sup>242</sup> 'Itaque sicut Deus unius tantum est naturae, hoc est divinae, et nomen eius, ita et homo unius est naturae, i.e. humanae, et nomen eius semper i.e. ita et homo unius tantum est naturae, i.e. humanae, et nomen eius semper i.e. tam in subiecto quam in praedicato': *Tractatus de assumpto homine*, §23, p. 168.

<sup>243</sup> '*Christus* vero et *Dominus gloriae* et *gigas geminae substantiae* et si quid aliud est simile magis duarum sunt substantiarum': *Tractatus de assumpto homine*, §23, p. 168.

<sup>244</sup> '[P]er brevissimas mutationes ab evidenter veris ad evidenter falsa perducunt [...] Dicitis enim vos: si homo ille persona est, qui assumptus est, ergo assumpta est': *Tractatus de assumpto homine*, §15, p. 165.

<sup>245</sup> 'The "Tractatus"', ed. by Häring, p. 156.

<sup>246</sup> Marie-Dominique Chenu, 'Grammaire et théologie au XIIe et XIIIe siècles', *Archives d'histoire doctrinale et littéraire du moyen âge*, 10 (1935), 5–28 (pp. 22–23); Marie-Dominique Chenu, *La théologie au douzième siècle* (Paris: Vrin, 1957), pp. 90–107.

contributors to the *logica modernorum*, such masters applied the grammar of Aristotle's *logica vetus* and the elements of Platonism transmitted by Augustine, before the establishment of the *logica nova*. This heralded the beginnings of terminist logic.<sup>247</sup> In the twelfth century this speculative grammar reached an especially sophisticated expression in the works of Gilbert of Poitiers.<sup>248</sup> Some scholars have sought to distinguish a uniquely twelfth-century nominalism, with its emphasis on discussions of consignification, or joint meaning, from the more widely-understood nominalism associated with debates on universals as against realism. In its twelfth-century manifestation, masters discussed the metaphysical implications of grammatical rules, which provided the conjoint signification of nouns or words in both the nominative and oblique cases, as well as verbs in the future and present tense.<sup>249</sup>

<sup>247</sup> The literature on this topic is vast and continually expanding. Helpful surveys and bibliographical lists are provided by Marcia L. Colish, *Medieval Foundations of the Western Intellectual Tradition, 400–1400* (New Haven: Yale University Press, 1997), p. 275; Marcia L. Colish, *Remapping Scholasticism*, Etienne Gilson Series, 21 (Toronto: Pontifical Institute of Mediaeval Studies, 2000), pp. 9, 12; Marcia L. Colish, 'Haskins' Renaissance Seventy Years Later: Beyond Anti-Burckhardtianism', *The Haskins Society Journal*, 11 (2003), 1–29 (p. 7, n. 24; pp. 9–10). See also Martin Grabmann, 'Die Geschichte der mittelalterlichen Sprachphilosophie und Sprachlogik', in *Mélanges Joseph de Ghellinck*, ed. by Maurice Hélin, 2 vols (Gembloux: Duculot, 1951), II, pp. 421–34; Artur Michael Landgraf, 'Nominalismus in den theologischen Werken der zweiten Hälfte des zwölften Jahrhunderts', *Traditio*, 1 (1943), 183–210 (p. 199); *The Cambridge History of Later Medieval Philosophy: From the Rediscovery of Aristotle to the Disintegration of Scholasticism 1100–1600*, ed. by Norman Kretzmann and others (Cambridge: Cambridge University Press, 1982; repr. 1988).

<sup>248</sup> Häring, 'The Case of Gilbert'; Nikolaus M. Häring, 'Sprachlogik und philosophische Voraussetzung zum Verständnis der Christologie Gilberts von Poitiers', *Scholastik*, 32 (1957), 373–97; H. C. Van Elswijk, *Gilbert Porreta: Sa vie, ses oeuvres, sa pensée*, Spicilegium Sacrum Lovaniense, Études et documents, 33 (Louvain: Spicilegium Sacrum Lovaniense, 1966); Bruno Maioli, *Gilberto Porretano: Dalla grammatica speculativa alla metafisica del concreto* (Rome: Bulzoni, 1977); Sofia Vanni Rovighi, 'La filosofia di Gilberto Porretano', in *Studi di filosofia medioevale*, ed. by Sofia Vanni Rovighi (Milan: Vita e pensiero, 1978), pp. 176–247; Nielsen, *Theology and Philosophy*, pp. 47–51; Lambert Marie De Rijk, 'Gilbert de Poitiers: ses vues sémantiques', in *Gilbert de Poitiers et ses contemporains. Aux origines de la logica modernorum. Actes du septième symposium européen d'histoire de la logique et de la sémantique médiévales, Poitiers 17–22 juin 1985*, ed. by Jean Jolivet and Alain de Libera (Naples: Bibliopolis, 1987), pp. 147–71; Colish, 'Gilbert', pp. 229–50.

<sup>249</sup> Chenu, *La théologie au douzième siècle*, pp. 93, 96, 99; Landgraf, 'Nominalismus in den theologischen Werken', pp. 192–94; Colish, *Peter Lombard*, I, pp. 275, 287, 300; William J. Courtenay, *Capacity and Volition: A History of the Distinction of Absolute and Ordained Power*

As shown here, Vacarius is opposed to such principles of theological grammar. He refuses to identify semantic unity in either the subject or the predicate of a sentence, instead highlighting their differences in meaning, as between person and substance in the word *homo*. Further, for Vacarius, word order is no reliable guide to metaphysical language. Notwithstanding his refusal to adopt such principles, he is aware of their capacity to ensnare theological debate and confound understanding of the faith.

Related to speculative grammar is the predication of attributes. The notion of the mutual or reciprocal predication of Christ, which, in the thirteenth century became known as the ‘communication of properties’ (*communicatio idiomatum*), describes a consequence of the hypostatic union by which the attributes of both the human and divine natures were predicated of the one person of Christ.<sup>250</sup>

According to Vacarius, and conventional Catholic orthodoxy, it was ‘rightly said’ that ‘God is man’ and ‘man is God’. This was because the words ‘God’ and ‘man’, when predicated, did not imply any change or fusion of the two substances, but signified the union of the two substances in one person, or the personal union.<sup>251</sup> But, despite their appositeness in expressing this personal or hypostatic union, anthropomorphic phrases such as ‘God was seen on earth’ or ‘God was crucified’, are ‘not to be accepted’, strictly speaking, ‘according to the nature of the substance and the property of the names’.<sup>252</sup> Vacarius further explains that, in predicating *ille homo* with *Deus est*, *Christus est*, and *persona est*, he signifies the substantial union or incarnation. But when declaring that the substance of *ille homo non est Deus*, *non est Christus*, he removes the union or confusion of the substances. By way of explanation, he adds, *ille homo* did not

(Bergamo: Lubrina, 1990); William J. Courtenay, ‘*Nominales* and Nominalism in the Twelfth Century’, in *Lectio varietates: hommage à Paul Vignaux*, ed. by Jean Jolivet, Zenon Kaluza, and Alain de Libera, with foreword by Charles Pietri, *Études de philosophie médiévale*, 65 (Paris: Vrin, 1991), pp. 11–48 (pp. 17–20); and the contributors to the special edition of *Viviarum*, 30 (1992) devoted to the subject.

<sup>250</sup> Principe, *William of Auxerre’s Theology*, pp. 68–70.

<sup>251</sup> ‘Quod autem Deus, qui est divina substantia, sit homo; vel homo, qui est humana substantia, sit Deus, recte dicitur. Haec nomina “Deus” et “homo” in sua ad invicem praedicatione non confusionem substantiarum vel proprietatem earum exprimunt vel innuunt sed magis earum in unam personam unionem significant’: *Tractatus de assumpto homine*, §24, p. 169.

<sup>252</sup> ‘Sed secundum rerum naturam et nominum proprietatem non sunt recipienda huiusmodi verba’: *Tractatus de assumpto homine*, §25, p. 169.

become God by the nature of his substance, but by the assumption or incarnation.<sup>253</sup>

Vacarius adopts the position taken by many of the *assumptus homo* theorists on mutual predication. Although Hugh stated that anthropomorphic statements in respect of Christ, such as ‘Man is eternal’ (*homo est eternus*), were defensible on the basis that man was united with the divine nature, it was nonetheless prudent to refrain from such statements since it was also obvious that man did not exist from or for eternity.<sup>254</sup> Robert Pullen, Robert of Melun, and John of Cornwall also adopted the doctrine of mutual predication.<sup>255</sup> Robert of Melun and John, in particular, attacked the *habitus* theorists, who denied the mutual predication of attributes in Christ.<sup>256</sup> Vacarius, however, in a similar way to Achard of St Victor, never explicitly expresses the principle of communication of idioms.<sup>257</sup> Achard explained that the union between God and man ‘made God human and a human God’. In this union God gave everything that was his to the *assumptus homo* and took to himself everything that was the assumed entity’s. This led to the *assumptus homo* saying to the Word: ‘Everything that is yours by nature is mine by grace, and everything that is mine by nature is yours by

<sup>253</sup> ‘Cum enim dico “ille homo Deus est, Christus est, persona est”, substantiae unionem seu assumptionem veraciter praedico. Cum autem dico quod illius hominis substantia non est Deus, non est Christus, substantiarum confusionem unitatemque removeo. Homo enim ille non per naturam substantiae factus est Deus sed per assumptionem’: *Tractatus de assumpto homine*, §38, p. 174.

<sup>254</sup> Hugh of St Victor, *De sacramentis Christianae fidei*, in PL: 176, cols 395A, 398A; Nielsen, *Theology and Philosophy*, pp. 205, 207.

<sup>255</sup> ‘Non tamen fiebat caro, quomodo nec homo [...] Unus est enim Magister vester’: Robert Pullen, *Sententiarum*, in PL: 186, cols 784A–C; ‘Quid est igitur Deus est homo nisi, unitus hominis; quid est homo est Deus nisi unitus Deo’: Robert Pullen, *Sententiarum*, in PL: 186, cols 786C, and 784A–B, 786D, 787D. See also Courtney, *Cardinal Robert Pullen*, pp. 190–93; Robert of Melun, *Abbreviatio*, 97–98 (*Sententiae*, 2.2.160–61, fol. 235ra), cited in Nielsen, *Theology and Philosophy*, p. 319, n. 151; Robert of Melun, *Quaestiones et decisiones in Epistolas S. Pauli*, in *Oeuvres de Robert de Melun*, ed. by Martin and Gallet, II, pp. 10–11; Robert of Melun, *Quaestiones de divina pagina*, in *Oeuvres de Robert de Melun*, ed. by Martin and Gallet, I, p. 33; John of Cornwall, *Eulogium*, in ‘The “Eulogium”’, ed. by Häring, p. 275.

<sup>256</sup> Robert of Melun, *Abbreviatio*, 62, 73, 83 (*Sententiae*, 2.2.112, fol. 224<sup>r</sup>; 2.2.128, fol. 227vb; 2.2.143, fol. 231<sup>v</sup>), cited in Nielsen, *Theology and Philosophy*, p. 294; John of Cornwall, *Eulogium*, in ‘The “Eulogium”’, ed. by Häring, p. 274.

<sup>257</sup> Châtillon, ‘Achard de St Victor’, p. 320.

condescension (*dignatio*).<sup>258</sup> This last statement accurately summarizes Vacarius's principled, but underdeveloped, notion of the mutual attributes in Christ.

## Understanding Change

Since Christ is *aliquid*, both through His nature because He is God, and through the incarnation because he is man, B and his fellow Christological Nihilianists lack appreciation (in the eyes of Vacarius) as to how a thing could 'be', 'be the same', or 'be *aliquid*'.<sup>259</sup> So Vacarius begins his explanation of the nature of change, problematized in Boethius's commentaries on Aristotle's *Categories*, particularly focussing on the notion of an entity which was not what it used to be, but whose underlying substance or entity remained the same.<sup>260</sup>

For Vacarius, the divine 'essence' (*essentia*) is eternally immutable and remains 'the same'. The essence of a soul remains the same, even if it is changeable in nature. But other things (for instance, a man or a river), remain 'the same', not because of their essence, which changes daily down to its smallest components, but because their species (*species*) remain the same.<sup>261</sup> Thus one speaks of the 'same man', the 'same river', and the 'same thing', not because of the same essence, but because of the same species or nature of their substance (*substantiae natura*).<sup>262</sup> But a ship, Vacarius, continues, made from fir-trees, and whose timbers are replaced with cypress planks (i.e. a different body), would still be 'the same' ship, since, although its nature and substances changed, its

<sup>258</sup> 'Christus vero statim a sua conceptione omnimoda [...] sed unum, non in natura, sed in persona': Achard of St Victor, *Sermo 1 in natali Domini*, in *Sermones inédits*, ed. by Châtillon on *inédits*, pp. 31–33.

<sup>259</sup> '[P]er naturam inde Christus aliquid est, quia Deus est, ita per assumptionem idem ipse inde est aliquid, quia est homo. Hii autem qui hec negant esse vera, non considerant quod variis modis et rationibus dicitur res esse vel eadem esse vel esse aliquid': *Tractatus de assumpto homine*, §27, p. 170.

<sup>260</sup> Principe, *William of Auxerre's Theology*, p. 30; Christopher J. F. Martin, *An Introduction to Medieval Philosophy* (Edinburgh: Edinburgh University Press, 1996), pp. 79–81.

<sup>261</sup> 'Essentia quoque animae et aliorum similium eadem manet quidem sed ex tempore et natura mutabilis. Sunt autem res aliae quae non secundum ipsam sui essentiam sed magis propter eandem speciem ea[e]dem esse dicuntur ut flumen, homo et similia': *Tractatus de assumpto homine*, §27, p. 170.

<sup>262</sup> 'Ergo non propter eandem essentiam sed propter eandem speciem "idem homo" et "idem flumen" esse dicitur et "eadem res" et "idem"': *Tractatus de assumpto homine*, §28, p. 170.

property (*proprietas*) or property of its species (*speciei proprietas*) did not.<sup>263</sup> Thus, one speaks of the ‘same ship’, despite a change in substance and nature, since its property or *proprietas speciei* remains as it was. Vacarius therefore identifies species and property respectively as the key indicators of continuity of substance, apart from the sameness of essence in the case of divine substances and the human soul. And whereas Aristotle identified two levels of substantial change, namely matter and form, Vacarius points to substance (that is, matter), nature (that is, form), and essence.<sup>264</sup>

Of course Vacarius applies this philosophical language to the main point of his treatise, the hypostatic union. For the above reasons, Vacarius notes, by the ‘novel and miraculous (i.e. hypostatic) union God became man and man became God when God-the-Word assumed man into the same person, which person was Christ’.<sup>265</sup> The change was in the properties, since these were diverse and several: Christ was two distinct substances (*aliud Deus et aliud homo*) by the property of the substance. But Christ was one and the same by the ‘personal’ property of the substances.<sup>266</sup> Vacarius then restates the *aliquid est* position of Christ as God and man. Vacarius avails himself of Aristotelian language to demonstrate that the very quality of continuity of substance, that is property, changes in the incarnation; thus there is substantial change, but in the one person.

### Who was ‘B’?

The identity of Vacarius’s interlocutor is not strictly necessary to understanding the arguments Vacarius puts forward concerning the hypostatic union. They seem clearly directed towards the view that Christ was one, divine substance, with a body and soul in a loose composition. Vacarius is at pains to clarify that the two natures in Christ do not mean that there were two persons therein. Vacarius even goes so far as to say that Christ was two substances. Such views

<sup>263</sup> *Tractatus de assumpto homine*, §28, p. 170.

<sup>264</sup> Michael Haren, *Medieval Thought: The Western Intellectual Tradition from Antiquity to the Thirteenth Century*, 2nd edn (London: Macmillan, 1992), p. 17.

<sup>265</sup> ‘Cum autem praedictis rationibus et modis res eadem dicantur, novo et mirabili modo Deus homo factus est et homo Deus i.e. per assumptionem Deo Verbo hominem assumente in eandem personam, quae persona Christus est’: *Tractatus de assumpto homine*, §29, p. 170.

<sup>266</sup> ‘Substantiarum ergo proprietates plures sunt et diversae. Earum vero substantiarum personalis proprietas una est et eadem. Unde proprietate substantie aliud Deus et aliud homo’: *Tractatus de assumpto homine*, §29, p. 170.



were particularly antithetical to followers of the *habitus* position, since they presumed that, if Christ had two substances, he therefore had two persons, a view which was clearly false.<sup>267</sup> Häring was inclined towards the view that Vacarius was especially concerned to attack this one-substance position. Its arguments, he felt, were very similar to those outlined by the Cistercian, Everard of Ypres, in his twelfth-century letter to Pope Urban III, composed between 1185 and 1187. Everard attacked an anonymous opponent for the latter's statement that it followed that, being one person, Christ was only one substance, or essence or nature; and from Christ being man and being God, that Christ was two.<sup>268</sup> Everard suspected, as a result, that the author was falling into the error of Eutyches, since he taught that, being one person, Christ was only one substance, essence, or nature.<sup>269</sup> Häring did not suggest any possible link between Everard's opponent and Vacarius's opponent, B; no doubt this was because Everard's treatise post-dated Vacarius's. Further, Häring cites a passage from Vacarius's subsequent work on christology, the *Liber contra*, when demonstrating the apparent similarity to Everard's treatise.

Although it is not a discussion I will take up at length here, it is most likely that 'B' was Master Bandinus.<sup>270</sup> Bandinus was a theologian who composed one of the first commentaries on the Lombard's *Sententiae*, just after 1155–57. He himself had been a student of Peter Lombard's in Paris in the 1150s, up to the latter's death around 1160, and he was therefore familiar with the scholastic debates on christology. His commentary on the *Sentences* reveals a christological doctrine diametrically opposed to the *assumptus homo* position outlined by Vacarius. Bandinus's treatise is a clear attempt to abbreviate and summarize the Lombard master's work, and Colish has seen in it a radicalization and extreme demonstration of the *habitus* position which many attribute to the Lombard.<sup>271</sup>

<sup>267</sup> Nielsen, *Theology and Philosophy*, p. 329, n. 192.

<sup>268</sup> 'The "Tractatus"', ed. by Häring, p. 150; cf. 'Christus est homo, Christus est Deus; igitur Christus est duo. Non sequitur': Everard of Ypres, *Epistola ad Urbanum III*, in 'Epistolae (De Quibusdam Articulis Fidei; De Homine Assumpto, de Duabus Naturis et una Persona Christi, et de Proprietatibus Characteristicis ad Urbanum Papam III)', ed. by Nikolaus M. Häring, *Mediaeval Studies* 17 (1955), 162–72 (p. 165).

<sup>269</sup> 'Procedendum est de errore qui est de Christi natura. Qui melius innotescet, si ad memoriam revocetur haeresis Eutychiana': Everard, *Epistola ad Urbanum III*, §14, in 'Epistolae', ed. by Häring, p. 166.

<sup>270</sup> I take will up the discussion at greater length in a forthcoming paper.

<sup>271</sup> Colish, 'Christological Nihilianism', p. 149.

Bandinus advocated a number of positions which are at odds with Vacarius. First, in the rubric to *distincto* six he asked: 'What is the meaning of the phrase *Deus est homo* (God is man)? Or, as it is more easily recognized, what is said of that proposition: God is man, and man is God, and similar things?' He answered his own questions by arguing that it 'must be briefly predicated, that from these things, which the Son of God took up, namely soul and flesh, that no person of man was composed (therefrom)'. The reason for this, Bandinus stated, was that, although these two components — soul and flesh — came together in other men and this way are similar to Christ, in Christ, soul and flesh do not meet.<sup>272</sup> Thus, he clearly held that the body and soul in the *assumptus homo* were separate.

Further, Bandinus described the manner of the union between the Word and this separated body and soul as a relationship of *habitus*. 'Since the Son of God becomes man,' he stated, 'not so that he is essentially and truly made man, like you — composed of the essence of your soul and body — but essentially and truly becomes man, according to *habitus*.'<sup>273</sup> And Bandinus explained this relationship: 'Since, therefore it is said, God is man, a *habitus* is predicated, as the meaning is that God has manhood, or is having manhood: or that even a human person is predicated.'<sup>274</sup> This made Bandinus a most obvious proponent of the so-called *habitus* theory.<sup>275</sup>

Bandinus went further, however, in linking the *habitus* doctrine directly to Christological Nihilianism. With characteristic directness and brevity he dealt squarely with this issue:

<sup>272</sup> '*Quis sit sensus istius, Deus est homo.* — Ut autem facilius cognoscatur, quid istis propositionibus dicitur: Deus est homo, et homo est Deus, et similibus, breviter praedicendum est, quod ex illis, quae Filius Dei suscepit, scilicet anima et carne, nulla persona hominis composita est. Tunc enim demum ex duobus his persona componitur, cum principaliter in eo quod persona non est, conveniunt, ut in caeteris hominibus a Christo contingit': Bandinus, *Summa Sententiarum libri quatuor*, 3, d. 6, in PL: 192, cols 971A–1112C, 1074B.

<sup>273</sup> 'Est enim Filius Dei factus homo, non ita essentialiter et vere factus homo, ut tu qui es ipsa composita essentia animae tuae et corporis, sed essentialiter et vere factus est homo secundum habitum': Bandinus, *Summa Sententiarum libri quatuor*, 3, d. 6, in PL: 192, col. 1074C.

<sup>274</sup> 'Cum ergo dicitur, Deus est homo, habitus praedicatur, ut sit sensus, Deus habet hominem, vel est habens hominem: vel etiam persona humanata praedicatur': Bandinus, *Summa Sententiarum libri quatuor*, 3, d. 6, in PL: 192, col. 1075A.

<sup>275</sup> See further Nielsen, *Theology and Philosophy*, pp. 289, 292.

But it must be known that the Son of God, *ex eo quod* He took on manhood, did not become *aliquid*, that is a person or a nature, because there is no quaternity in the Trinity, nor is Christ two natures, since, moreover, it is written: 'In two and from two natures or substances Christ subsists'; it does not say 'that He is two (natures)', but that He became of the other nature which He was not before.<sup>276</sup>

Bandinus took an unashamedly Nihilianist line. His epitomized understanding of the Lombard's discussion of the issue, the date of his work, and his name make him a prime candidate for being identified as the mysterious B in the *Tractatus de assumpto homine*.

## Conclusion

The *Tractatus de assumpto homine*, composed between 1164 and 1170, has been regarded by scholars as a work of little currency to twelfth-century theological debates. This is clearly not so: Vacarius's work taps into the fundamentally important debates on Christological Nihilianism which occupied papal politics and scholastic thinkers from the 1160s to the end of the 1170s. Vacarius's finding that Christ as man is *aliquid*, although itself hardly original, was in accordance with the *assumptus homo* position; more importantly, it was representative of orthodoxy, reflecting the decretals made by Pope Alexander III between 1170 and 1179, denouncing Christological Nihilianism.<sup>277</sup>

What is of great significance is that such a work as the *Tractatus de assumpto homine* should have come from the pen of a lawyer. Despite his civilian background, Vacarius betrays no hint of legal doctrine in the treatise; it is pure theology. But the dialectic method of the lawyer and the scholastic theologian were not so different, in Vacarius's eyes. He treated the anonymous B with a degree of deference, analysing his arguments closely, identifying their weakness, and correcting them; such calmness and detachment is absent from the treatises of his confreres, such as John of Cornwall, Walter of St Victor, and Gerhoch of

<sup>276</sup> 'Sciendum est autem quod Filius Dei, ex eo quod hominem suscepit, non est factus aliquid, hoc est, persona vel natura, quia nec quaternitas in Trinitate est, nec duae naturae Christus est, cum tamen scriptum sit: In duabus et ex duabus naturis vel substantiis subsistit Christus, non dicitur: quod duae sit, sed factus est alicujus naturae, cujus non erat prius': Bandinus, *Summa Sententiarum libri quatuor*, 3. d. 8, in PL: 192, col. 1075C.

<sup>277</sup> The situation of 1179 was to change. In the subsequent scholastic debates of the thirteenth century, the Thomistic view gained ascendancy, in effect the subsistence theory: Häring, 'The Case of Gilbert', p. 38.

Reichersberg, but is more identifiable with the complex and abstruse Robert of Melun. This is particularly evident in Vacarius's use of theological terms in reference to the second person of the Trinity in the incarnation: person, substance, and nature. Even more so, Vacarius's use of speculative grammar and Boethian-Aristotelian notions of change are unexpected for someone ostensibly non-specialist in theological language. Seen in this context, Vacarius's use of authorities such as Augustine, Boethius, pseudo-Athanasius, Claudianus Mamertus, and Faustus of Riez, is not so much a recourse to traditional authorities as a clarification of their 'true' meaning in the face of sophistical and corrupt interpretations by his opponents. If the identification of B with the *habitus* proponent Bandinus is accepted, he and Vacarius represent a discrete but important contribution to the twelfth-century christological debates as well as a hitherto little-recognized forum for Italian-English intellectual discourse.

### *Part III: The Liber contra*

#### **Outline and Structure of Capitula 32 of the *Liber contra***

Vacarius returns to the topic of christology in *capitula* 32 of the latest of his known works, the *Liber contra multiplices et varios errores*.<sup>278</sup> I will deal with this work at length in the following chapter; here I deal only with its christology. It is a work composed by Vacarius as a systematic refutation of the theological, sacramental, and heretical errors of his erstwhile colleague, Hugo Speroni. In a section of the *Liber contra*, bearing the title 'That Christ in the personal union was a human substance contrary to the blind doctrine of those who deny this', Vacarius discusses the hypostatic union in a manner that is both familiar to and different from the *Tractatus de assumpto homine*.<sup>279</sup>

The structure of this section on the 'personal union' in the *Liber contra* is very different from the *Tractatus de assumpto homine*. It is some twelve edited pages in length, while the *Tractatus de assumpto homine* is just over thirteen. The similarities in format end there: while, as this chapter has shown, the *Tractatus de assumpto homine* is widely discursive and composed of interlocking themes and arguments which Vacarius begins and then returns to, the *Liber contra* has

<sup>278</sup> *Liber contra*, §32, pp. 572–83. See Chapter Four below.

<sup>279</sup> '[Rubric:] Quod Christus in unitate persone fuit etiam humana substantia contra cecam doctrinam eorum qui hoc negant': *Liber contra*, §32, pp. 572–83.

a much more obviously clear argument. It begins with a lengthy quotation from 'Jerome's letter to Paula and Eustochium on the incarnation, followed by a short commentary. Vacarius uses this authority to link his anti-Speronian arguments on the real presence in the Eucharist to a continuation of his explanation of the nature of the union of the human and divine natures in Christ. Vacarius then turns to the dissenting argument, which posits a single substance in Christ: he rebuts this with his now-familiar explanation of Christ as two substances. This leads to other considerations, such as the issue of whether Christ was a *creatura* (creature), how Christ was 'two', Christ's accidents, and the communication of idioms. He concludes with a polemical entreaty for Speroni to avoid error and embrace the 'orthodox' notion of the hypostatic union.

The tone and mood of this work differ from Vacarius's earlier treatment of christology. Whether mock or otherwise, the earlier work shows Vacarius's humble recognition of his limited ability to unlock the mysteries of faith, in what was perhaps his first foray into systematic theology. In contrast, no such introductory caveat prefaces the christological section of the *Liber contra*. He launches directly from an assault on Speroni's flawed understanding of the Eucharist to an explanation of the incarnation by the sacrament of the personal, or hypostatic, union.

### **Linking the Hypostatic Union and the Eucharist through Pseudo-Jerome**

The most significant difference to the *Tractatus de assumpto homine* lies in the linking of christology in the *Liber contra* to an understanding of the real presence in the Eucharist. Speroni had denied the existence of the real presence, as the next chapter will reveal. Vacarius's response was to resort to the *auctoritas* of one of the Church Fathers. In the *Tractatus de assumpto homine* he turned to a rather obscure fifth-century figure, Claudianus Mamertus, when discussing Christ's passibility; in this case Vacarius attempts to explain the reality of the incarnation by utilizing another unusual source. Vacarius identifies it as Jerome's ninth letter to Paula and Eustochium on the assumption of the Blessed Virgin Mary.<sup>280</sup> His attribution, a common medieval misconception, is mistaken; it is in fact taken

<sup>280</sup> 'Ex his Ieronimus in *epistola ad Paulam* hanc novam unitatem commendat dicens: *Hec est mira at admirabilis novitas*': *Liber contra*, §31, p. 572; cf. pseudo-Jerome, *Epistula IX ad Paulam et Eustochium: De assumptione beatae Mariae Virginis*, in PL: 30, cols 126B–47B, 136C–40B. See *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 572, n. 1.

from the work *Cogitis me* ('You compel me') by the Carolingian monk and theologian, Paschasius Radbertus (c. 790–c. 865).<sup>281</sup>

This text deals with the question of the Assumption of the Blessed Virgin Mary, the belief that Mary's body and soul were taken up into heavenly glory at the end of her earthly life. This pseudo-Jerome epistle was used later in the Roman breviary due to the beauty of its language, rather than because of its paradigmatic explanation of doctrine. In the absence of consensus regarding a theological explanation for this feast of the Church, Paschasius's text debated whether Mary's having 'left the body' meant that she ascended into heaven in the body or out of the body, in a manner analogous to Christ's resurrection.<sup>282</sup> The relevant passages cited in the *Liber contra* deal with the mystery of Christ's birth, both in the miraculous manner in which Mary retained her virginity despite parturition, and, more importantly for Vacarius, how this birth occurred, despite Jesus's prior existence in time.<sup>283</sup> Neither time, works, nor place, he argues, could prevent the miraculous manner of Christ's birth, by reason of the hypostatic union.<sup>284</sup> This union allowed Christ to declare: 'Before Abraham was, I am'.<sup>285</sup> It was a mystery and a sacrament, not explicable to human senses.<sup>286</sup>

<sup>281</sup> Jugie attributed the text to Paschasius: M. Jugie, *La mort et l'assomption de la sainte Vierge: Étude historico-doctrinale*, Studi e testi, 114 (Vatican City: Biblioteca Apostolica Vaticana, 1944), pp. 277–79. The text has been re-edited in *Der Pseudo-Hieronymus-Brief IX "Cogitis Me": Ein erster marianischer Traktat des Mittelalters von Paschasius Radbert*, ed. by Albert Ripberger, Spicilegium Friburgense, 9 (Freiburg (Switzerland): Universitätsverlag, 1962). Hereafter, the text will be cited as: '*Cogitis me*, ed. by Ripberger'.

<sup>282</sup> Paschasius, *Cogitis me*, ed. by Ripberger, 7–9, pp. 60–61; 81, pp. 95–96; see also Jaroslav Jan Pelikan, *The Christian Tradition: A History of the Development of Doctrine*, 5 vols (Chicago: University of Chicago Press, 1978), III, p. 72.

<sup>283</sup> '*Constat tempus non preiudicare sacramento uniti hominis ac Dei [...] ne suo nubilare vos velint o[b]scuritatis eloquio*': *Liber contra*, §32, pp. 572–74. The theme of Mary's perpetual virginity and the miraculous nature of Christ's birth was also taken up by Paschasius Radbertus, *De partu Virginis*, in *Paschasii Radberti De partu virginis: De assumptione sanctae Mariae Virginis*, ed. by Albert Ripberger, Corpus Christianorum, Continuatio Mediaevalis, 56C (Turnhout: Brepols, 1985).

<sup>284</sup> '[Q]ue unitas tam mirabilis est et commendabilis ut nec tempore, nec operatione, nec loco preiudicetur. Nam, sicut Ieronimus probat, tempus non preiudicat sacramentum uniti hominis ac dei': *Liber contra*, §31, pp. 571–72.

<sup>285</sup> '*Unde Dominus: "Antequam Abraam" inquit "fieret ego sum"*': *Liber contra*, §32, p. 572.

<sup>286</sup> '*[S]ed quia in unico illo filio Dei iam unitas persone commendabatur, que erat occulta in misterio*': *Liber contra*, §32, p. 572.

Vacarius may have turned to Paschasius's more famous work on the Eucharist, the *De corpore et sanguine Domini* to emphasize this link between the Mass and the hypostatic union.<sup>287</sup> Given that the passages from Paschasius/pseudo-Jerome discuss the personal union of Christ extensively, however, there is little need. For example, in an earlier passage in the *Liber contra* Vacarius refers to the Johannine phrase that Jesus is the 'living bread descended from the sky', to link the hypostatic union to the Eucharist. Christ, he states, 'descended' from heaven, not only as the Word (*secundum Verbum ipsum*), but as flesh (*secundum carnem*), that is, as the *assumptus homo* (*secundum hominem assumptum*). This is the teaching of 'Jerome', Augustine, and even the upholders of the Nicene synod, states Vacarius.<sup>288</sup>

Vacarius utilizes pseudo-Jerome in order to demonstrate with authority Speroni's errors on the Eucharist. Speroni, Vacarius reveals, was denying the true presence by an ironically exaggerated conception of Christ as being bitten and chewed by the teeth of the faithful in the Mass.<sup>289</sup> But, states Vacarius:

It is not carnally, that is in a carnal species that (the host) is eaten and that (Christ) fulfilled His life, or descended from the sky, but by that virtue and power which (the *assumptus homo*) becomes God through the sacrament of the personal union; which union is as miraculous as it is commendable so that neither time, nor works, nor place prejudices it.<sup>290</sup>

<sup>287</sup> Paschasius Radbertus, *De corpore et sanguine Domini*, ed. by B. Paulus, Corpus Christianorum, Continuatio Mediaevalis, 16 (Turnhout: Brepols, 1969).

<sup>288</sup> '[...] Christus, non solum secundum Verbum ipsum, sed etiam secundum carnem, id est secundum hominem assumptum, de celo descendisse possit dici, tamen non solum Jeronimus et Augustinus, sed etiam Nicena Synodus': *Liber contra*, §20[4], pp. 536–37. cf. John 6. 51; *Symbolum Nicaeni Concili*, in *Sanctorum conciliorum et decretorum collectio nova, seu collectionis conciliorum*, ed. by J. D. Mansi and others, 6 vols (Lucca: Salani & Giuntini, 1748–52), II, cols 665–68; *Histoire des conciles d'après les documents originaux*, ed. by C. J. Hefèle, and contin. and trans. by H. Leclercq and others, II vols in 22 (Paris: Letouzey et Ané, 1907–52), I, part I, pp. 442–50; Augustine, *In Joannis Evangelium*, 27, 4, in PL: 35, col. 1617; Augustine, *Contra Maximium*, 2, c. 20, 3, in PL: 42, col. 789. See *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 342.

<sup>289</sup> *Liber contra*, §32, p. 571.

<sup>290</sup> 'Neque carnaliter, id est in carnali specie manducatur et vitam prestat, aut de celo descendit, sed in virtute et potestate illa qua factus est Deus per sacramentum personalis unitatis; que unitas tam mirabilis est et commendabilis ut nec tempore, nec operatione, nec loco preiudicetur': *Liber contra*, §32, p. 571.

Vacarius demonstrates that it was by virtue of the ‘sacrament’ of the hypostatic union that Christ was truly present in the Mass. But this did not mean that his flesh was physically eaten or bitten: ‘In virtue of this sacrament [i.e. the hypostatic union], and not in His carnal property nor His visible nature is Christ’s flesh eaten and his blood drunk in a certain spiritual manner.’<sup>291</sup> By this same miraculous reason, Vacarius states, the consumption of the host could occur at the same time on several different altars.<sup>292</sup> Such a process defies human reason, just as Christ’s miracle in feeding five thousand people from a single loaf did.<sup>293</sup>

Vacarius further refutes the carnal understanding of the Mass with illustrations of the hypostatic union drawn from the anthropomorphic language of the Gospels. Following the extensive passages from pseudo-Jerome, Vacarius concludes:

From the aforesaid words of the letter, the merit of the sacrament of the *assumptus homo* and the assuming God, is apparent. Since the man Jesus had existed from the beginning of time with God through a personal union [...].<sup>294</sup>

Pseudo-Jerome’s commentary, he observes, establishes that the language of the Gospels testify that Christ was upon the earth as any other man, yet miraculously He was together with God in union as a single person from when time began. The phrase: ‘Before Abraham was, I am’, established Christ’s eternity.<sup>295</sup> This language calls to mind the misuse of Augustine’s emphasis on Christ’s humanity by dissenters in the *Tractatus de assumpto homine*; but here Vacarius relies on this type of language to prove Christ’s humanity and reality in time.

Significant in this discussion of Christ’s historical and sacramental reality is Vacarius’s focus on the concept of works (*operationes*). In the passage quoted above, Vacarius notes that the hypostatic union ‘is as miraculous as it is

<sup>291</sup> ‘In cuius sacramenti virtute, et non in carnali proprietate nec in sua natura visibili, Christo caro manducatur et sanguis bibitur quodam spirituali modo’: *Liber contra*, §32, p. 575.

<sup>292</sup> ‘[H]ac etiam ratione in pluribus altaribus uno eodemque tempora esca ista sumi potest in predicti sacramenti virtute’: *Liber contra*, §32, p. 575.

<sup>293</sup> ‘Et deficit humana ratio; cum etiam in miraculo illius panis, quo Dominus V milia hominum saciavit’: *Liber contra*, §32, p. 575; cf. Matthew 14. 14–21; Mark 6. 34–44; Luke 9. 11–17; John 6. 5–14.

<sup>294</sup> ‘Ex premissis verbis epistole meritum sacramenti hominis assumpti et Dei assumptis apparet. Nam quod homo Ihesus in Deo per unitatem persone ab initio seculi fuerit, ex predictis probat Ieronimus’: *Liber contra*, §32, p. 574.

<sup>295</sup> ‘Priusquam Abraam fieret ego sum’: *Liber contra*, §32, p. 574; cf. John 8. 58.



commendable so that neither time, nor works, nor place prejudices it'. Although he had used this term, *operationes*, in the *Tractatus de assumpto homine*, that discussion rather focused on *operationes* as human accidents.<sup>296</sup> In the *Liber contra*, Vacarius describes these works as both divine and human natures: 'This [i.e. hypostatic union] (exists) according to the works of natures, which are discerned by human senses, separating God from man. Since divine nature is designated through the Word, and human nature through the flesh.'<sup>297</sup> Examples of the former, divine nature were: Christ's bringing back from the dead those who had died, and curing the blind; while instances of the latter, human nature included Christ's hunger, eating, and drinking.<sup>298</sup> Nielsen saw this passage as a counter to the *habitus* theory. The *habitus* theorists, he suggested, held that the person as subject was always identical with the divine substance. In response to the dissenters, Vacarius here, along with other *homo assumptus* proponents, states that the person as a subject was both a human and divine substance; this was so because the *assumptus homo* in the Gospels often spoke of himself as a person.<sup>299</sup>

One significant feature of Vacarius's discussion of pseudo-Jerome differs from his christological discussions in the *Tractatus de assumpto homine*. Earlier in the *Tractatus de assumpto homine*, he used the word *unio* in reference to the hypostatic union.<sup>300</sup> He had consciously avoiding the cognate term *unitas*, except by way of illustrating erroneous understandings of the hypostatic union.<sup>301</sup> In the *Liber contra*, however, he changes his mind completely; he repeatedly uses the

<sup>296</sup> 'Quae substantia veras humanas habuit infirmitates, ut in infantia quidem Christi omnino ad operationes infirma esset': *Tractatus de assumpto homine*, §14, p. 165.

<sup>297</sup> 'Hoc secundum naturarum operationes, que humanis sensibus discernuntur, Deum secernunt ab homine. Per Verbum enim divina natura, per carnem humana natura designatur': *Liber contra*, §32, p. 575.

<sup>298</sup> *Liber contra*, §32, p. 575.

<sup>299</sup> Nielsen, *Theology and Philosophy*, p. 319, n. 151.

<sup>300</sup> '[N]on ipsarum substantiarum conversione vel confusione sed earum in personam eandem *unione*': *Tractatus de assumpto homine*, §29, p. 171; cf. 'Et cum hae duae substantiae absque omni proprietatis et naturae confusione in eadem persona *unitae* fuerint': *Liber contra*, §32, p. 572 [my emphasis added].

<sup>301</sup> '[U]nio admittatur, ut conversio unius in alteram omnino fugiatur et earum *unitas* atque confusio': *Tractatus de assumpto homine*, §23, p. 168 [my emphasis added].

term *unitas* to describe the hypostatic union.<sup>302</sup> He provides no explanation for this change.

Vacarius's misattributed recourse to a ninth-century Mariological text to explain the significance of the hypostatic union in understanding the real presence in the Eucharist, is exceptional among twelfth-century authors. As he did with Claudianus Mamertus, he uses a patristic *auctoritas* which is only slightly, rather than completely, on point, from which to launch a discussion tailored to his own needs. Like Paschasius Radbertus's *De corpore et sanguine Domini*, Vacarius emphasizes the identity of the Eucharistic host with the natural or historical body of Christ in such exaggerated terms that the difference between the two modes of existence is not sufficiently clarified. An explanation for this choice of pseudo-Jerome thought lies in the formation of that text as a part of the breviary, and therefore its importance to the divine office and the regular orders. Thus, his approach is to deal with the issue of the incarnation and hypostatic union in the pastoral and liturgical context in which pseudo-Jerome's text was read. Further, Vacarius's recourse to this authority is unique in discussions on christology, since most treatises at the time linked discussions on christology instead to explanations of the Trinity.

### The Erroneous View that Christ is One Divine Substance

Vacarius then returns to more obvious themes in twelfth-century christological debates. Specifically, he condemns the notorious doctrine of many people who asserted 'that Christ was only one substance or nature or form, namely a divine one and not a human one.'<sup>303</sup> He had earlier observed that 'modern masters' had articulated such an argument.<sup>304</sup> The one-substance position is the same error identified with B in the *Tractatus de assumpto homine*.<sup>305</sup> But, whereas in the

<sup>302</sup> Vacarius uses *unitas* six times in a passage immediately preceding the pseudo-Jerome passage: *Liber contra*, §32, pp. 571–72; three times immediately following the passage: *Liber contra*, §32, pp. 574–75; and on no fewer than fourteen subsequent occasions, *Liber contra*, §32, p. 577 (three times), pp. 580–81 (twice), p. 582 (seven times), and p. 583 (twice).

<sup>303</sup> '[M]ultorum doctrina communiter vulgata [...] Asserunt ergo Christum unam solam substantiam sive naturam vel formam fuisse, scilicet divinam et non humanam': *Liber contra*, §32, p. 576.

<sup>304</sup> 'Ideo moderni nostri magistri in hoc articulo erraverunt, dicentes quod una tantum substantia Christus fuit, scilicet divina': *Liber contra*, § 20[4], p. 537.

<sup>305</sup> *Tractatus de assumpto homine*, §4, p. 162; §6, p. 163.

*Tractatus de assumpto homine* he had concerned himself mostly with the error that flowed from such a position, namely the adventitious relationship of a soul and body to the divine Word, the *Liber contra* focusses squarely on the single divine substance issue.

There is no indication, however, that such arguments emanated from Hugo Speroni, the object of attack in Vacarius's *Liber contra*; while Vacarius addresses his erstwhile colleague by name on matters of error on the Eucharist, he pointedly fails to do so on this point of christology, instead referring to the anonymous masters of the schools who had been the target of his earlier treatise.<sup>306</sup> For this reason, Da Milano labelled Vacarius's discussion of the hypostatic union a 'digression'.<sup>307</sup> As I have shown above, however, Vacarius is at pains to demonstrate the link between understandings of orthodoxy on both the Eucharist and christology. It is difficult, therefore, to conceive of this entire section devoted to christology in the *Liber contra* as a mere diversion.

In order to demonstrate the erroneous basis of the view that Christ is merely one divine substance, Vacarius applies the concept of Christ's works (*operationes*), as found in pseudo-Jerome's letter. Dissenters from this perspective argued that the single divine substance or person of Christ carried out both the divine and human works of Christ. Vacarius responds as follows: since the divine person is a divine substance, the dissenters cannot deny that the divine substance supports Christ's divine works; otherwise these would not be shared by the three Trinitarian persons. But if this were so, the divine substance cannot carry out human works, because they are not of a divine substance.<sup>308</sup> For the dissenters, the divine nature carried out these works; in this case they were more properly called 'divine', not human works.<sup>309</sup> Here, Vacarius demonstrates that the attribution of a single divine substance or person to Christ does not account for

<sup>306</sup> Speroni, Vacarius says, is even more depraved than the dissenting masters since, not only did he sin grievously in exegesis and in spurning the Scriptures, but in rejecting the Church itself altogether: 'Tua vero est apertissime prava, quoniam non in exponendo tantum, sed in respuendo Ecclesie Scripturas, immo etiam ipsam Ecclesiam, gravissime peccas': *Liber contra*, §32, p. 581.

<sup>307</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 340.

<sup>308</sup> 'Sed cum ipsa persona Christi divina sit substantia, negare non possunt quin ipsa divina substantia suas in Christo, id est divinas, exerceret operationes. Aliter enim non essent communes trium personarum, scilicet Patris et Filii [et] Spiritus Sancti. Humanas vero operationes nec divina substantiae efficiebat, quia eius non erant': *Liber contra*, § 32, p. 576.

<sup>309</sup> '[I]ta quod in Christo divina quidem natura suas operationes efficiebat, humana vero natura nullo modo suas, sed persona divina': *Liber contra*, § 32, p. 576.

his dual human and divine natures, a point also forcefully made in the *Tractatus de assumpto homine*.

Vacarius clarifies his use of the term *operationes*, in the context of the dissenters' view that Christ was one divine nature. Using expressions from pseudo-Jerome, such as 'With the Word operating what is of the Word' and 'With the flesh carrying out what was of flesh', 'the Word' and 'the flesh', respectively, were divine and human forms, according to Vacarius.<sup>310</sup> In this way, he explains, the word *operationes*, for pseudo-Jerome, means the different forms by which man is distinguished from God.<sup>311</sup> In the *Tractatus de assumpto homine*, Vacarius similarly considered forms, or natures, as something to which a substance was a substrate, and which themselves could not be substrates.<sup>312</sup> Vacarius there distinguished the form or nature *humanitas*, to which human substance was a substrate, from the form or nature *divinitas*, to which the divine substance was a substrate.<sup>313</sup> Vacarius confirms that human forms are the works supported by animate flesh, such as eating, drinking, and laughing.<sup>314</sup> He had described these very same works as 'accidents' in the *Tractatus de assumpto homine*.<sup>315</sup>

Vacarius explains that the diversity of the human and divine natures in Christ is not compromised in the personal or hypostatic union. According to pseudo-Jerome, the Word was not flesh, nor was flesh the Word, since they were different in form, and separated in time, place, and work. But this in no way 'prejudiced' the hypostatic union.<sup>316</sup> Further, Vacarius continues, as the Gospel of John described 'the Word made flesh', this was true, in spite of its seeming

<sup>310</sup> '[D]icendo Ieronimus: *Verbo operante quod Verbi est, voluit per Verbum divinam formam designare [...]* Cum autem dixit: *Carne exequente que carnis erant*, per carnem merito humanam formam significavit': *Liber contra*, §32, p. 576.

<sup>311</sup> '[S]ed Ieronimus, ut diximus, secundum diversas formas, id est per earum operationes, Deum quodam modo ab homine discernebat': *Liber contra*, §32, pp. 576–77.

<sup>312</sup> *Tractatus de assumpto homine*, §33, p. 172.

<sup>313</sup> *Tractatus de assumpto homine*, §37, p. 173.

<sup>314</sup> 'Si ergo humana forma, secundum Ieronimum, id est caro animata, exequebatur predicta opera sua, scilicet comedendi, bibendi, ridendi': *Liber contra*, §32, p. 576.

<sup>315</sup> *Tractatus de assumpto homine*, §8, pp. 163–64.

<sup>316</sup> 'Ideo hic, inquit Ieronimus, *et precognita identitas preiudicatur*, idest nulla utriusque supradicte forme proprietas, ut secundum eam neque Verbum sit caro, neque caro sit Verbum; sed separentur tempore et loco et operatione; et ita nulla *identitas preiudicatur*, cum de unitate personali dictum sit quod nullo preiudicatur modo': *Liber contra*, §32, p. 577.

contradiction to pseudo-Jerome. This was because the Word was flesh in the personal union, although the flesh was not the Word by its nature.<sup>317</sup>

Vacarius seeks to clarify this distinction between the unified concept of person and the dual natures in the hypostatic union by seeking out the views of other Church Fathers. Although St Hilary and Augustine seemed to be at odds, the former stating that the Son of Man was the Son of God, and the latter arguing that the Son (of God) was God and man — one substance God and the other man, they were not so diametrically opposed as one might think.<sup>318</sup> St Hilary's statement, in the eyes of Vacarius, was true because he said it in reference to the incarnation and the personal union, while Augustine's was also true because he spoke of the nature.<sup>319</sup> Thus, Vacarius concludes that, just as the personal unity (*persona unitas*) joins man and God, so does their nature (*proprietas naturae*) distinguish them.<sup>320</sup>

Vacarius further rebuts the dissenting argument that Christ is only one divine substance, nature, or person, by turning to understandings of the *Categories*: did not a species exist by reason of its supporting genus, and a genus exist by reason of its species?<sup>321</sup> Therefore, the Word took up the animate nature in man, because it is of man.<sup>322</sup> In other words, the species of man existed by reason of the genus of animal, and the Word took on the animate nature in man when it assumed man. This argument, Vacarius states, proves the dissenters' argument false. This categorization of man as a species of animal is explained with more precision in the *Tractatus de assumpto homine*. There, Vacarius distinguishes the species of man from its genus of animal by the attribute of 'personality or 'personhood', that is, rationality or soul.<sup>323</sup> The effect of this argument is that there is a human

<sup>317</sup> 'Utrumque verum est, et quod Verbum caro est in unitate persone et quod caro non est Verbum secundum identitatem nature': *Liber contra*, §32, p. 577.

<sup>318</sup> *Liber contra*, §32, p. 577, n. 4; cf. Hilary of Poitiers, *De Trinitate*, 9, 40, in PL: 10, col. 313; St Augustine, *De Trinitate*, 1, c. 10, in PL: 42, col. 834.

<sup>319</sup> 'Sed quod Hylarius dixit, secundum assumptionem in unitate personae verum est; Augustinus vero magis secundum naturam locutus est': *Liber contra*, §32, p. 577.

<sup>320</sup> '[U]t sicut persone unitas deum et hominem coniungit [...] ita nature proprietas eos similiter separet': *Liber contra*, §32, p. 577.

<sup>321</sup> 'Quis enim non intellegit quod sublato genere manet species et quod posita specie ex necessitate adest genus?': *Liber contra*, §32, pp. 577–78.

<sup>322</sup> '[E]rgo naturam animalis in homine Verbum suscepit, quia ipse est hominis': *Liber contra*, §32, p. 578.

<sup>323</sup> *Tractatus de assumpto homine*, §30, p. 171.

substance in Christ because there is an animate substance in Christ. Such an argument provides a response to followers of the *habitus* theory, who seemingly posited an adventitious relationship between Christ and His human nature, which prevented this from ever constituting a human substance.<sup>324</sup> Vacarius's alternative line of argument, if anything, exaggerates the human substance in Christ.

The human nature in man, Vacarius continues, although misunderstood by many in the past and the present, is clarified in the Athanasian creed. This doctrine provides that Jesus Christ, the Son of God, is both perfect man and perfect God.<sup>325</sup> Further, it states that the perfect man subsisted from rational soul and human flesh.<sup>326</sup> Thus, the perfect man is animate (*animal*) by his animate nature without which he cannot exist; these properties, which are in Christ and which made his animate nature, are the accidents of eating and drinking.<sup>327</sup> Vacarius had likewise referred to the pseudo-Athanasian creed in the *Tractatus de assumpto homine* in order to argue that Christ was a 'perfect man', comprising both animal and human nature, in the context of dissuading his opponents that Christ was only one divine nature.<sup>328</sup> In both texts he refers to the same human accidents, namely eating and drinking, when discussing the issue.<sup>329</sup>

For Vacarius, it is evident from this that the view, which held that Christ had only one, divine, substance, is false. Vacarius understands the reason for the dissenters' error: on the basis that they already presupposed that Christ was a divine substance, if they were then to say that Christ is a human substance, they would be compelled to say that Christ is two substances, and therefore 'two'.<sup>330</sup> As in the *Tractatus de assumpto homine*, Vacarius points out that his opponents

<sup>324</sup> Nielsen, *Theology and Philosophy*, p. 319, n. 150.

<sup>325</sup> 'Athanasius cum dixisset: *Dei Filius deus est et homo, addidit postea: Perfectus Deus, perfectus homo*': *Liber contra*, §32, p. 578; cf. *Symbolum de fide catholica*, in PL: 28, col. 1583.

<sup>326</sup> '[H]ic hominis perfectionem perperam [...] ideo ipse Athanasius quomodo intellegi debeat exponit, scilicet: *Ex anima rationali et humana carne subsistens*': *Liber contra*, §32, p. 578; cf. *Symbolum de fide catholica*, in PL: 28, col. 1583.

<sup>327</sup> *Liber contra*, §32, p. 578.

<sup>328</sup> *Tractatus de assumpto homine*, §§9–10, p. 164; §13, p. 165.

<sup>329</sup> '[S]cilicet comedendi, bibendi, essent in Christo, quod animalis natura esset in eo, ut esset animal': *Liber contra*, §32, p. 578; cf. 'Nam actiones sugendi lac, edendi et bibendi et similibus magis ex natura animalis procedunt': *Tractatus de assumpto homine*, §8, pp. 163–64; §9, p. 164, and §39, p. 174.

<sup>330</sup> *Liber contra*, §32, p. 578.

confused two substances with two persons.<sup>331</sup> But, in this case, Vacarius turns for support to another solid Church authority, pseudo-Athanasius. Although the literal description of Christ as two is never seen in theological treatises, Vacarius begins, this absence is perhaps understandable, since Athanasius stated that Jesus Christ was God and man. This is quite different, however, from saying that there are two Christs; this was a clear error, as Athanasius pointed out.<sup>332</sup> Augustine's *Enchiridion* also confirms this, when it states that Christ is God and man, and that each substance is one, although one thing insofar as the Word and another as man. Augustine states that 'each is one' (*utrumque unus*), rather than 'each one' (*utrumque unum*).<sup>333</sup> In this way Christ is two or dual; each nature constitutes the one Christ, there are not two Christs.<sup>334</sup> In the *Tractatus de assumpto homine* Vacarius accused his opponents of Eutychianism and Nestorianism; here he instead focusses on the more obvious dissenting argument that Christ as two meant there were 'two Christs'.

Vacarius returns to the issue of Christ's two substances by way of the related topic of theological language. Why, Vacarius asks on the basis of his previous discussion, is Christ not called 'two', since he is each — divine and human — substance? For, although this was written nowhere in the authorities, there is no reason why it cannot be said, unless purely for the sake of avoiding new terms. On the same basis, Vacarius ventures, people avoid saying that Christ is 'one, and not two'.<sup>335</sup> He quotes a further passage from pseudo-Jerome, commenting on I John 1. 1, omitted in Vacarius's earlier discussion of Christ's *operationes*:

<sup>331</sup> *Tractatus de assumpto homine*, §35, p. 173; 'The "Tractatus"', ed. by Häring, p. 151.

<sup>332</sup> 'Sed quamvis hec verba: Christus est duo, nusquam reperiantur, tamen cum duo sint Deus et homo, Athanasius eum dixit esse duo, quando dixit: *Ihesus Christus Deus et homo est*; et ideo ne quis ex hoc putaret quod duo essent Christi': *Liber contra*, §32, p. 578.

<sup>333</sup> 'Hec eadem Augustinus exponit apertius. Nam in *Enchiridion* ita scripsit: *Christus Ihesus Deus de deo est, homo natus ex Maria Virgine, utraque substantiae, scilicet divina et humana, Filius est unicus Patris; utrumque unus, sed aliud propter Verbum aliud propter hominem*. Non dixit: *Utrumque unum*, sed *utrumque unus*': *Liber contra*, §32, p. 579; Augustine, *Enchiridion ad Laurentium, sive de fide, spe et charitate*, 1, c. 38, 12, in PL: 40, col. 251.

<sup>334</sup> '[A]liud propter Deum, aliud propter hominem; utrumque est unus Christus, non duo Christi': *Liber contra*, §32, p. 581.

<sup>335</sup> 'Si queras an dicendum sit quod Christus sit duo, cum sit utraque substantia, scilicet divina et humana, quamvis forte nusquam inveniantur hec verba autentice scripta, cur non debeat dici ratio non occurrit, nisi illa locum habeat hic qua verborum novitatem vitare iubemur [...] sed etiam unum esse dicatur et non duo, secundum eandem rationem': *Liber contra*, §32, p. 580.

(John) says “That which was from the beginning, which we have heard, which we have seen with our eyes, which we have looked upon, and our hands have handled, concerning the Word of life”, although noone could see God-the-Word nor touch Him with their hands, unless through the sacrament of the man united to Him.<sup>336</sup>

But although Christ was called ‘one’ person, he was not simply ‘one’; likewise, although He was each substance, He was not simply ‘two’.<sup>337</sup>

Vacarius searches for greater semantic precision in describing Christ’s nature in the hypostatic union. Vacarius states that it is not incorrect to call the Son of God ‘a dual substance’ (*gemina substantia*).<sup>338</sup> As noted earlier, the dissenters identified substance and person, and therefore could not agree that Christ was two substances. Instead, the dissenters allowed that Christ be ‘of a dual substance’ (*gemine substantie*).<sup>339</sup> In this way, they saved the personal unity of Christ and used the word ‘substance’ instead of ‘person’.<sup>340</sup> In the *Tractatus de assumpto homine* Vacarius conceded that it was acceptable that Christ be called ‘of two substances’, but he takes a different line in the *Liber contra*.<sup>341</sup> Despite failing to acknowledge the inconsistency with his earlier work, Vacarius highlights the problem with using such terminology: nothing, he states, is *of* a divine substance which *is* not itself a divine substance, or the Father or the Holy Spirit; in the same way, nothing is *of* a human substance which *is* not itself a

<sup>336</sup> ‘Quod Ieronimus probat ex verbis Iohannis apostoli: “Quod fuit ab inicio, quod audivimus, inquit, et vidimus et manus nostre tractaverunt de verbo vite cum nemo Deum Verbum videre ac manibus tractare possit, nisi per sacramentum sibi uniti hominis”: *Liber contra*, §32, p. 580; pseudo-Jerome, *Epistula IX*, in PL: 30, col. 139.

<sup>337</sup> ‘Et sicut ex duabus naturis quamvis unum secundum personam fuisse dicatur, non tamen dimpliciter unum. Ita ex eo *quod* est utraque substantia, scilicet divina et humana, non est dicendum simpliciter *quod* est duo’: *Liber contra*, §32, p. 581 [my emphasis]. Note that Vacarius uses *quod*, the impersonal pronoun, where we may have expected him to use *qui*. He similarly uses *quod* in the *Tractatus de assumpto homine*, §29, p. 171: ‘[...] vere dicitur quod Deus idem sit *quod* homo quia est homo’ [my emphasis].

<sup>338</sup> ‘Nam quod gemina substantia sit Filius Dei non absurde dicitur’: *Liber contra*, §32, p. 581. Vacarius uses the phrase *gemina substantia* in the *Tractatus de assumpto homine*, §6, p. 163; §23, p. 168; §33, p. 172; cf. the phrase *duplex substantia*, in *Tractatus de assumpto homine*, §6, 163.

<sup>339</sup> ‘[Q]uamvis illi alii iam dicti non quod gemina substantia, sed quod gemine substantie sit concedant’: *Liber contra*, §32, p. 581.

<sup>340</sup> ‘The “Tractatus”’, ed. by Häring, p. 151.

<sup>341</sup> *Tractatus de assumpto homine*, §25, p. 169; ‘The “Tractatus”’, ed. by Häring, pp. 151, 156.



human substance, or Peter or Paul or some other man.<sup>342</sup> The same logic, Vacarius points out, applies to other things. Thus, if something is *of* an equine substance, it is itself an equine substance, that is, a horse. He concludes this discussion with an emphasis on grammatical correctness. It is more correct, he adds, to say that Christ is *of* human nature, rather than He *is* human nature; but conversely, a man is correctly said to *be* human nature, even though he is *of* human nature.<sup>343</sup> Vacarius calls upon the Church Fathers to bolster his claim that Christ ought to be called two substances, rather than *of* two. That Christ can be called human nature is supported by St Augustine and pseudo-Jerome.<sup>344</sup> Vacarius accuses the dissenters of holding to a doctrine which is both blind and opaque.<sup>345</sup> In short, Vacarius agrees with the dissenters that Christ is *of* two natures, although his reason for doing so differs from them.

Vacarius also clarifies the analogy of the body and soul in illustrating the hypostatic union, again calling on the authority of the pseudo-Athanasian creed.<sup>346</sup> When the dissenters, whom he now calls 'renowned masters' (*memorati magistri*), read the Athanasian Creed, he points out, they did not realize that it taught that, just as one man was 'two', namely rational soul and flesh, so one Christ was 'two', namely God and man.<sup>347</sup> Vacarius, however, emphasizes that this was a mere analogy and did not accurately describe the union of God and

<sup>342</sup> 'Sed nullus invenitur qui sit divine substantie qui non sit divina substantia, sive Pater sive Spiritus Sanctus; sicuti nullum reperies humane substantie qui non sit humana substantie, sive Petrus, sive Paulus, sive quilibet alius': *Liber contra*, §32, p. 581.

<sup>343</sup> 'Nisi quis pretendat quod, quamvis Christus sit humane natura, non tamen recte dicitur quod ipse sit humana natura, sicut nec alius homo est humana natura, quamvis sit humane nature': *Liber contra*, §32, p. 581.

<sup>344</sup> 'Sed quod humana etiam natura Christus dicatur, Augustinus demonstrat cum ait: *Quid humana natura in Christo homine meruit ut in unitate persone uniti Filii Dei singulariter assumpta esset?* [...] Nam eundem per hominem intellegit quem per naturam; sicut Ieronimus supra nomine forme sive nature eundem designavit': *Liber contra*, §32, p. 581; cf. Augustine, *Enchiridion*, c. 36, 11, in PL: 40, col. 250; pseudo-Jerome, *Epistula IX*, in PL: 30, col. 139.

<sup>345</sup> 'Idcirco eorum doctrina ceca est et obscura': *Liber contra*, §32, p. 581. He used the phrase several other times: '[...] Sed haec doctrina illorum quam sit falsa, quam ceca': *Liber contra*, §32, p. 577; 'Ex his evidenter apparet quam falsa, quam ceca sit opinio eorum': *Liber contra*, §32, p. 578.

<sup>346</sup> *Liber contra*, §32, p. 581; cf. *Liber contra*, §32, p. 578.

<sup>347</sup> 'Denique memorati magistri cum Athanasium legant, nesciunt eum docere quod sicut unus homo est duo, scilicet anima rationalis et caro, ita unus Christus est duo, scilicet Deus et homo': *Liber contra*, §32, p. 581.

man in Christ. Man was 'two' by composition (*per compositionem*) of body and soul but each of these was not the entire man (*non est tota utriusque*), whereas Christ was 'two' without composition because the personal union of Christ was entirely of God and entirely of man (*tota est Dei et tota hominis*).<sup>348</sup> In the *Tractatus de assumpto homine*, Vacarius had used the union between the body and soul to illustrate the personal union between God and man, via Claudianus Mamertus.<sup>349</sup> He had also in that work drawn a similar comparison when describing the whole man (*totus homo*) as being called just or unjust, or black or white, because of one of these attributes, just as the 'whole' Christ was eternal and immortal, by his divinity, and crucified and died, on account of his humanity.<sup>350</sup> Accordingly, Vacarius comes out in favour of Christ as two substances more obviously in his *Liber contra* than in his *Tractatus de assumpto homine*, concluding that Christ is two substances and forms (*gemine est substantie et biformis*), since he is wholly of a divine substance and wholly of a human substance in miraculous manner.<sup>351</sup>

But Vacarius distinguishes the union between body and soul and the personal or hypostatic union in Christ. Reprising an earlier quotation taken from pseudo-Jerome, Vacarius observes that the 'novelty of the union' (*novitas unitatis*) confirms that the whole man crossed into God and the whole God into man through this union, since the entirety of the union was of each (*ipsa tota sit utriusque*).<sup>352</sup> It was not on the basis of this principle, says Vacarius, that the person of man was said to be soul or flesh, nor the flesh soul, nor the soul flesh, because the unity of the human person was not entirely of the soul or flesh, but composed from each. Thus man was said to be 'two' by reason of the

<sup>348</sup> '[H]omo enim duo est per compositionem; ideo hominis unitas personalis non est tota utriusque, id est neque anime neque carnis, sed compositi ex utroque. Christus vero sine compositione est duo, scilicet Deus et homo, quia Christi unitas personalis tota est Dei et tota hominis': *Liber contra*, §32, pp. 581–82.

<sup>349</sup> cf. *Tractatus de assumpto homine*, §20, p. 168.

<sup>350</sup> *Tractatus de assumpto homine*, §26, pp. 169–70.

<sup>351</sup> 'Et idcirco ipsa gemine est substantie et biformis, cum sit tota divine substantie et tota humane mirabili modo': *Liber contra*, §32, p. 582.

<sup>352</sup> 'O quam mirabilis est huiusmodi novitas unitatis, per quam unitatem totus homo in Deum transieret et Deus totus in hominem, cum ipsa tota sit utriusque': *Liber contra*, §32, p. 582; cf. Augustine, *Epistula IX*, in PL: 30, col. 139; cf. *Liber contra*, §32, p. 574.

composition and not just ‘two *simpliciter*’.<sup>353</sup> Accordingly, Christ was said to be ‘two’, not as Peter and Paul were two, but ‘in the aforesaid miraculous union’ in which the same Christ was both wholly God and wholly man.<sup>354</sup>

He returns to the distinction between the ‘composition’ of man and the union in Christ. In the former neither the soul nor the flesh was man, whereas the divine substance was Christ and the human substance was Christ because they had ‘their own operations’ (*propriam habere operationem*).<sup>355</sup> In this way, as he did in the *Tractatus de assumpto homine*, Vacarius distinguishes the union of man and God in the hypostatic union and the ‘composition’ of body and soul in man.<sup>356</sup>

In summary, Vacarius places great emphasis on the notion that Christ has two substances, and not one, as the dissenters believed. This concern, while perhaps implicit in the earlier *Tractatus de assumpto homine*, was subsumed in his aim there to dispel the error that the Word absorbed the *assumptus homo* as a separate soul and body. Although Vacarius does not refer to the mysterious B in this later treatise, it seems that he may have had the errors of that figure in mind when composing the *Liber contra*.

## Other Scholastic Debates

Vacarius turns to the dissenters’ argument that Christ was not created, that is, a man, since He himself was the Creator. The dissenters cited Augustine (probably his *De Trinitate*), in support of this: the Son of God, because He made every creature, therefore, was not Himself a human substance.<sup>357</sup> Vacarius responds that the dissenters do not properly understand Augustine: the writer in question here referred to the Son of God’s nature, since nowhere do you find such things said of the Son of Man, Christ, Jesus, nor the man born of Mary.

<sup>353</sup> ‘Itaque cum homo dicitur esse duo, scilicet anima et caro, compositionis ratione et non simpliciter duo esse dicitur’: *Liber contra*, §32, p. 582.

<sup>354</sup> ‘[...] sed in prefata mirabili unitate, in qua idem Christus totus est Deus et totus homo’: *Liber contra*, §32, p. 582.

<sup>355</sup> *Liber contra*, §32, p. 582.

<sup>356</sup> cf. *Tractatus de assumpto homine*, §29, p. 170.

<sup>357</sup> ‘Obiciunt autem hii contra hec sentiunt, quod Augustinus probat Dei Filium non esse creaturam, quia omnem fecit creaturam; ergo non est substantia humana’: *Liber contra*, §32, p. 579, n. 4; cf. Augustine, *De Trinitate*, 1, c. 6, 9, and 12, in PL: 42, cols 825, 827; Augustine, *De diversis quaestionibus*, q. 67, 1, 2, in PL: 40, cols 66, 67.

For, just as the Son of Man was not by his nature Creator (*creator*), but instead a creature (*creatura*), so the Son of God by nature was Creator, not creature. Likewise, in the incarnation, the Son of God became a creature and the Son of Man Creator.<sup>358</sup> Vacarius had recourse to the cognate term *creatrix* (literally ‘mother’) briefly in the *Tractatus de assumpto homine*, but with little reference to this Creator-creature distinction: he first applied *creatrix* in the *Tractatus* to describe the divine nature in Christ;<sup>359</sup> he then used it to describe the divine substance which, according to Boethius, was not united with the human substance by mere confusion of properties, but by a personal union.<sup>360</sup> Clearly, this use in the *Tractatus de assumpto homine* was not concerned specifically with the Creator-creature distinction, as it is here in the *Liber contra*. He concludes in this work as follows: whatever the Son of God is by nature, the Son of Man is by the incarnation; and whatever the Son of Man is by nature, the Son of God is by the assumption. And in this way, the whole God crossed into man and the whole man into God, through the sacrament of the personal union.<sup>361</sup>

The significance of Vacarius’s greater engagement in the Creator-creature distinction in the *Liber contra* reveals a maturing theological knowledge. Indeed, the discussion of whether Christ was a creature had wide scholastic currency. Those such as the anonymous authors of the *Summa sententiarum* and the *Apologia de Verbo incarnato*, as well as John of Cornwall, dealt with two implications in the question: first, if Christ was eternal, and without a beginning, He could not be a creature, and was Creator;<sup>362</sup> second: if Christ had been

<sup>358</sup> ‘Ideoque nec de filio hominis, nec de Christo, nec de Ihesu, nec de homine ex Virgine Maria nato hoc invenies dictum. Nam sicut Filius hominis in sua natura non est creator, sed creatura, ita Filius Dei in sua creator est et non creatura. E contra, sicut Filius Dei per assumptionem hominis factus est creatura, ita Filius hom[inis] per eandem assumptionem factus est creator’: *Liber contra*, §32, p. 580.

<sup>359</sup> ‘[C]um negari non possit unam quidem esse in Christo substantiam divinam qua invisibilis et aeternae naturae omniumque creatrix est quae Deus est’: *Tractatus de assumpto homine*, §30, p. 171.

<sup>360</sup> ‘Ergo nec divina substantia facta est creatura nec humana creatrix’: *Tractatus de assumpto homine*, §32, p. 172.

<sup>361</sup> ‘Nam quicquid Filius Dei est per naturam, Filius hominis est per assumptionem; et quicquid Filius hominis per naturam, Filius Dei per assumptionem; et hac ratione totus Deus transivit in hominem et totus homo in Deum per sacramentum personalis unitatis’: *Liber contra*, §32, p. 580.

<sup>362</sup> ‘Solutio: Non est simpliciter concedendum quod Christus sit creatura, nisi addatur “secundum hominem”’: *Apologia de verbo incarnato*, in ‘The So-called *Apologia*’, ed. by Häring,

something else before He was the second person in the Trinity, He was a creature, and therefore merely an 'adopted' person in the Trinity.<sup>363</sup> This was in conscious opposition to the *habitus* theorists, who said that Christ was a creature by relation to the Word, or 'relatively'.<sup>364</sup> Vacarius, it should be noted, does not discuss this implication in either treatise. Accordingly, while the *Liber contra* reveals a greater level of engagement in contemporary scholastic debates on this issue than the *Tractatus*, his knowledge was not sufficient to further these debates in any way.

Vacarius links the duality in Christ to the principle of the communication of idioms, or properties: 'Each substance, namely the divine and human, was communicating itself one to the other mutually through the personal union what it had as its own.'<sup>365</sup> Through this communication of substances or natures, whatever God became, man was said to have become; and whatever man became, God was said to have become. Vacarius touched on the issue of the communication of idioms in the *Tractatus de assumpto homine* when referring to the *ad invicem praedicatione* of the substances or properties in the personal union.<sup>366</sup> But here, in the *Liber contra*, Vacarius seems to be aware of the concept as it was coming to be known by speculative theologians, as embodied in the phrase *communicatio idiomatum*. In particular, his theory now more closely resembled the doctrine as it was expounded by such writers as Robert Pullen, John of Cornwall, and Robert of Melun, in their predication of attributes to Christ.

## Conclusion

Vacarius concludes that this understanding of the hypostatic union is taught by pseudo-Jerome from divine Scripture, which the aforesaid masters (*dicti magistri*), that is, the dissenting masters, referred to in their corrupted teachings.

p. 123; John of Cornwall, *Eulogium*, in "The "Eulogium"", ed. by Häring, pp. 288, 290, 291.

<sup>363</sup> *Apologia de verbo incarnato*, 32, in 'The So-called *Apologia*', ed. by Häring, p. 123; 'Christus secundum quod homo, est Filius Dei. Si dicatur: per naturam an per adoptionem? neutrum concedam, sed per unionem': *Summa sententiarum*, I. 18, in PL: 176, col. 76C.

<sup>364</sup> Nielsen, *Theology and Philosophy*, p. 351, n. 251.

<sup>365</sup> 'Utraque tamen substantia, scilicet divina et humana, sibi invicem altera alteri mirabili modo in operando communicabat per unitatem persone quod proprium habebat': *Liber contra*, §32, p. 582.

<sup>366</sup> *Tractatus de assumpto homine*, §24, p. 169.

Led to their incorrect understanding through ignorance, Vacarius laments, they were not able to respond and contradict these matters because they tried to deal with them by human reason and sense.<sup>367</sup> As Vacarius had argued before in the *Tractatus de assumpto homine*, the miraculous and unique personal union of Christ, in his view, exceeded human reason and senses.<sup>368</sup> Instead, he advises in the *Liber contra*, if one proceeds in arguments of this nature by following (*secundum*) this understanding of the hypostatic union, all objections and problems would be resolved. He refers to ‘certain other little works’ of his whereby he had turned his mind to such issues when they had been brought to him for explanation; this no doubt was a reference to the *Tractatus de assumpto homine* and possibly some other, now-lost works of his.<sup>369</sup>

Vacarius ends his discussion of the hypostatic union and the *Liber contra* itself with the following admonition:

And so he who wishes to avoid the aforesaid error and preserve in the person of Christ the integrity of the human substance or form or nature, ought turn his mind to that exceptional novelty of the personal union of Christ, as Jerome teaches, so that he may realize that Christ is not only divine but also a human substance; but that He is only one person, namely a divine person.<sup>370</sup>

This succinctly captures Vacarius’s thought on the hypostatic union, both in its exposition of the orthodox doctrine on the hypostatic union, and its explicitly locating pseudo-Jerome as the central crib on which his argument is made.

While the focus on pseudo-Jerome distinguishes it from the *Tractatus de assumpto homine*, other significant differences exist in the discussion within the *Liber contra* concerning the hypostatic union. Whereas, in the latter text Vacarius focuses on the error that Christ as man is merely one, divine nature, his

<sup>367</sup> ‘[S]epe dicti magistri suis pravis expositionibus corrumperunt. Ad hoc per ignorantiam inducti, quia questionibus quibusdam ad humanam rationem et humanos sensus respicientibus respondere et contradicere non sufficiunt’: *Liber contra*, §32, p. 582.

<sup>368</sup> ‘[Q]uoniam mirabilem illam unicam novitatem unitatis persone Christi, que humanos sensus et rationes exsuperat non attendunt’: *Liber contra*, §32, p. 582; cf. ‘Huic ergo tam incomprehensibili veritati praedicate unionis’: *Tractatus de assumpto homine*, §30, p. 171.

<sup>369</sup> ‘Quod ego in nonnullis questionibus, que mihi fiebant expediendis, servare studui in quibusdam aliis meis opusculis’: *Liber contra*, §32, p. 583.

<sup>370</sup> ‘Qui vult itaque iam dictum errorem vitare et in persona Christi integram servare humanum substantiam vel formam sive naturam, animadvertere studeat illam supereminentem novitatem unitatis persone Christi, sicut docet Ieronimus, ut intelligat quod Christus non solum divina sed etiam humana substantia erat; sed una tantum persona, scilicet divina’: *Liber contra*, §32, p. 583.

earlier treatise had centred on the error that the body and soul in the *assumptus homo* were not united. Furthermore, the earlier treatise had started and ended with the Christological Nihilianist issue as to whether God as man was *aliquid*; this issue is not to the fore in the *Liber contra*, for nowhere does he even aver to the statement 'God as man is *aliquid*'. The terminological precision characteristic of the *Tractatus de assumpto homine* is lacking to some extent in the *Liber contra*; while both texts identify form and nature, only the *Tractatus de assumpto homine* distinguishes form/nature from substance. Further, the earlier use of speculative grammar and Boethian-Aristotelian notions of transformation do not reappear in the *Liber contra*; in their place is found a brief reference to the Creator-creature debate and the communication of idioms. This last reference is noteworthy, as the doctrine of the identification of properties or idioms was to have prominence in the thirteenth century; Vacarius therefore appears very current in his theological knowledge. Overall, however, the *Liber contra* does not have the same undercurrent of latent polemic which Vacarius directed against the anonymous B in his *Tractatus*. While the earlier treatise had elements of being a verbal debate reduced to writing, the *Liber contra* was clearly composed to literary and rhetoric effect.

### *Final Conclusions*

The ideas Vacarius expresses on the subject of the unity of humanity with the divinity in Christ in the *Tractatus de assumpto homine* and the *Liber contra* are doctrinally orthodox. Broadly speaking, they identify with the *assumptus homo* position posited by Hugh of St Victor and others. Vacarius, however, does not slavishly adhere to or mimic Hugh's christology, as some commentators have suggested. His approach is methodologically quite distinct. This is particularly apparent in the *Tractatus de assumpto homine*, with its recourse to sophisticated theological language, ranging from definitions of nature, substance, and person, to speculative grammar, and to philosophical notions of change derived from Aristotle's categories. Such concepts as these had not been utilized in the hands of earlier proponents of the *assumptus homo* position (Hugh of St Victor or Gerhoch, for instance), who were perhaps more mystically than scholastically inclined.

The distinctiveness of Vacarius's approach in these works is seen to best advantage, however, when considered *within* the context of those masters generally associated with the *assumptus homo* position. Doctrinally, Vacarius draws on the juridical notion of person espoused in the late 1130s by Hugh of St

Victor in his *De sacramentis*, and modified in the hands of the *Summa sententiarum*. Both of these works were informed particularly by their opposition to Abelard's 'theory of parts'. Robert Pullen, writing in the early 1140s also preoccupied himself with Abelard. Robert of Melun similarly opposed Abelard. But his more sophisticated incorporation of Gilbert of Poitiers's theories of forms gave Robert of Melun's works particular relevance to Vacarius's christological output. Robert was to influence the Victorine abbey, and hence the *assumptus homo* theorists at large, while his ecclesiastical career in England in the second half of the century brought him into contact with figures such as Vacarius.

Vacarius stands apart from the more obviously polemical style of Gerhoch of Reichersberg, Walter of St Victor, or John of Cornwall, whose works became prominent in the decades after the Lombard's death. Applying his sober and calculated legal reasoning to the *aliquid est* issue, Vacarius's *Liber contra* and *Tractatus de assumpto homine* evidence a reasoned and balanced approach. This contrast is not so surprising when seen against the extreme one-sidedness of Gerhoch, whose spiritually-inspired works sought to reform the Church. Yet, even when compared to the polemical tracts of John of Cornwall and Walter of St Victor, Vacarius's theology suffers little by comparison; this is perhaps surprising given the training in Parisian schools of the likes of John of Cornwall, and the contrasting background of Vacarius as a lawyer. Further, the tone of overt polemicism in Walter of St Victor, for example, differed from the focus and forensic method of the Italian jurist Vacarius.

Whilst gesturing towards this more sophisticated scholastic argumentation characteristic of the Parisian schools, Vacarius's works on christology stand apart from the more systematic style of the schoolmen. His works lack the polish, the precise application and citation of authorities, and the systematic comprehensiveness of a Gilbert of Poitiers or a Robert of Melun; nevertheless they contain an element of practical pastoral immediacy that would not have been lost on a reader. The emphasis on Christ's passibility, via Claudianus Mamertus in the *Tractatus de assumpto homine* and pseudo-Jerome's liturgical account of the hypostatic union in the *Liber contra*, illustrate this practical emphasis. The readers of Vacarius's works were perhaps the growing number of literate English clergy, who, seeking explanation and legitimation of the mystery of the incarnation, turned to a senior member of their order. The discussions provided by Vacarius would have satisfied the needs of this clergy, enabling them, in turn, to carry out their pastoral work armed with complex yet accessible reasons to support the 'truth' that Christ was both God and man. Vacarius's



pastoral concern is to elucidate matters of faith that appear to be in threat, in this case the orthodox notion of the identity of the *assumptus homo* and the Word in the incarnation.

As with his marriage treatise and the *Liber pauperum*, Vacarius indeed seeks truth. Truth, he implies, is available to anyone — theologian, jurist, or other — who is prepared to look for it. And this truth he seeks, and which he urges others likewise to seek, is orthodoxy. In composing these works on christology, Vacarius transcends the boundaries of lawyer to become theologian. As the following chapter will demonstrate, however, Vacarius's progression is not complete; as he deals with the many sacramental and theological errors that fill the rest of the *Liber contra*, he can be neither a mere lawyer nor a mere theologian; he must become a 'lawyer-theologian'.



## HERESY, THEOLOGY, AND SACRAMENTAL MATTERS

The final work by Vacarius to be studied here is the *Liber contra multiplices et varios errores*. While the previous chapter detailed Vacarius's absorption in the (perceived) theological error of Christological Nihilianism, as outlined in his *Tractatus de assumpto homine* and the final section of the *Liber contra*, the remainder of the *Liber contra* showcases his interest in a far wider range of theological issues. By providing, first, an outline of the text, its structure, and tone, I will then examine how modern scholars have perceived the work and its two connected protagonists, Vacarius and Speroni.

This Vacarian treatise is significantly longer and more developed than his other legal and supra-legal works: the *Liber contra* comprised over 118 edited pages, compared to the fourteen pages of the *Tractatus de assumpto homine* and the eighteen pages of the *Summa de matrimonio*, but it is still well short of the three hundred pages of textual citations and glosses in the *Liber pauperum*. The *Liber contra* covers the sacraments of holy orders, baptism, the Eucharist, and confession; it also examines related theological matters, such as original sin, justification, predestination, works, and circumcision, as well as aids to a Christian life, such as church buildings, religious art, ritual, and the veneration of saints.

*Part I: Background***The Text of the *Liber contra***

The *Liber contra* survives in a unique manuscript, MS Chigiano A.V. 156, held in the Vatican Library, of which Da Milano has provided an edition and commentary. Da Milano dated the manuscript to the first half of the thirteenth

century.<sup>1</sup> He was less certain of the composition-date of the work itself; on the basis of internal evidence, Da Milano believed that the work was composed no later than 1177, because Vacarius's discussion of the hypostatic union in the last part of the work failed to make mention of the important decretals of 1177 by Alexander III on the *aliquid est* issue, a reference Vacarius would have been unlikely to ignore.<sup>2</sup> Similarly, Boyle suggested a date after 1170.<sup>3</sup> But Da Milano also conceded a later date was possible; a date after 1177, and as late as 1185, coincided with a period in which the Speronists were officially recognized by the Church as a heretical movement. Häring, Stein, and others have similarly supported this later date.<sup>4</sup>

As discussed in the previous chapter, in relation to the date of composition of the *Tractatus de assumpto homine*, Vacarius would not have ignored the decretals of Alexander III, particularly in light of the fact that he had served the pontiff as a papal judge delegate seven times between 1176 and 1180. Even if, as Nielsen and Ebbesen have suggested, these papal decretals did not settle the *aliquid est* issue decisively, and appeared to leave the explanation of Christ's manhood 'open', Vacarius nevertheless would have considered them important precedents.<sup>5</sup> Vacarius was a conservative, orthodox man, quite different from the innovative theologian whom Nielsen and Ebbesen comment on. Furthermore, in my view, linking the date of composition of the *Liber contra* to the flourishing of the Speronist heresy is a flawed argument, as the (now) non-extant Speronian

<sup>1</sup> *L'Eresia di Ugo Speroni nella confutazione del Maestro Vacario: Testo inedito del secolo XII con studio storico e dottrinale*, ed. by Ilarino Da Milano, Studi e Testi, 115 (Vatican City: Biblioteca Apostolica Vaticana, 1945), p. 6. Hereafter the text will be cited as '*Liber contra*' and the commentary/analysis as '*L'Eresia di Ugo Speroni*', ed. by Da Milano.

<sup>2</sup> See *L'Eresia di Ugo Speroni*, ed. by Da Milano, pp. 345–46.

<sup>3</sup> Leonard E. Boyle, 'The Beginnings of Legal Studies at Oxford', *Viator*, 14 (1983), 107–31 (p. 115).

<sup>4</sup> 'The "Tractatus De Assumpto Homine" by Magister Vacarius', ed. by Nikolaus M. Häring, *Mediaeval Studies*, 21 (1959), 62–75 (text), 147–61 (commentary) (p. 149, nn. 17–18); hereafter the text will be cited as '*Tractatus de assumpto homine*' and the commentary as 'The "Tractatus"', ed. by Häring. Stein provides a date in the '1170s or 1180s' in his introduction to *The Teaching of Roman Law in England around 1200*, ed. by Francis De Zulueta and Peter Stein (London: Selden Society, 1990), p. xxv; *Heresies of the High Middle Ages: Selected Sources*, ed. and trans. by Walter L. Wakefield and Austin P. Evans (New York: Columbia University Press, 1991), pp. 152, 634; cf. *L'Eresia di Ugo Speroni*, ed. by Da Milano, pp. 59, 75.

<sup>5</sup> Lauge Olaf Nielsen and Sten Ebbesen, 'Texts Illustrating the Debate about Christology in the Wake of Alexander III's 1177 Condemnation', *Cahiers de l'Institut du moyen âge grec et latin*, 66 (1996), 217–51.

work to which the *Liber contra* responds was a work-in-progress, as I will discuss presently. Accordingly, a date in the period 1170 to 1177 — a period of doctrinal uncertainty and diffidence for the papacy — is most likely for the *Liber contra*.

It is mentioned in the prologue to the *Liber contra* that Speroni had sent Vacarius a letter, no longer extant, in which he set out his ideas of a new religious schema. It is these ideas which Vacarius's *Liber contra* rebuts.<sup>6</sup> It would appear that Speroni was comfortable in relating his radical ideas to Vacarius because of their pre-existing friendship. In the opening to the *Liber contra*, Vacarius greets Speroni as a onetime friend and associate: 'To Hugo Speroni, erstwhile companion and friend, Master Vacarius sends his greetings [...] I cannot bring myself to believe that you have forgotten that fraternal bond and fond friendship'.<sup>7</sup> He recalls their times as students together when they shared lodgings, and when Speroni used to trust his affairs to the more senior Vacarius, probably when they studied Romano-Justinianic law together in the schools at Bologna.<sup>8</sup> It seems that Speroni studied law there around 1145,<sup>9</sup> while Vacarius would have studied a decade earlier, in the 1130s; thus Vacarius may have been a tutor to Speroni and this might explain how they came to share lodgings. The relationship of mentor-pupil, and their common interest in Romano-Justinianic law, no doubt prompted Speroni to confide in Vacarius his challenging vision of a religious revolution.

Their common grounding in the Romano-Justinianic law becomes increasingly apparent, since Vacarius frequently relies on analogies from this juristic background and assumes Speroni's knowledge of it throughout the treatise. The intellectual friendship between the two is evident in the tone of the work, yet it is also significant that Vacarius signs himself *dictus magister* in his salutation to Speroni. He does not do this in any of his other works, but insists, in this context, on his didactic status as 'master'. In this same tone, Vacarius comments that, although he had found in Speroni's work some worthwhile

<sup>6</sup> 'Multa enim contra Ecclesiam proponis in quodam libro, quem Leonardus, nepos meus, mihi tuo nomine tradidit. Quem legi et iterum et iterum relegi. Et cum in eo quedam egregie scripta inveniuntur, plurima postea reperi que quamvis bona sint et vera, quorundam tamen falsorum adicione corrumpuntur et inutilia sunt; maxime quia ad improbum finem revertuntur et deducuntur': *Liber contra*, Prologue, [A], p. 475.

<sup>7</sup> 'Hugoni Sperono, quondam socio et amico suo, Vacarius, dictus magister, salutem [...]. Nolo te credere me oblivioni tradidisse fraternam societatis et familiaritatis dilectionem [...]': *Liber contra*, Prologue, [A], p. 475.

<sup>8</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 81.

<sup>9</sup> *Heresies*, ed. and trans. by Wakefield and Evans, p. 152.

aspects, the ideas were corrupted by the addition of many falsities which meant that the whole work was useless, because it led to an improper conclusion.<sup>10</sup>

Hugo Speroni was a prominent Piacenzan businessman and citizen from an aristocratic family, who held consular office in that city between 1165 and 1167. Scholars have pointed to his involvement in litigation on riparian rights against the monks of St Julia at Brescia as sowing the seeds for his eventual anti-Church and anti-clerical heresy.<sup>11</sup> But, by 1177, when Vacarius composed his treatise, Speroni was not yet a recognized heretic. Even though the *Ab abolendam* of 1184 implicitly proscribed his ideas, neither he nor his followers were explicitly identified.<sup>12</sup> Several generations later, in 1120, they did face direct condemnation by Frederick II, and in 1229 they were the objects of a bull of excommunication from Pope Gregory IX.<sup>13</sup> By 1235 they were still sufficiently visible to be

<sup>10</sup> 'Multa enim contra Ecclesiam proponis in quodam libro, quem Leonardus, nepos meus, mihi tuo nomine tradidit. Quem legi et iterum et iterum relegi. Et cum in eo quedam egregie scripta inveniuntur, plurima postea repperi que quamvis bona sint et vera, quorundam tamen falsorum adicione corrumpuntur et inutilia sunt; maxime quia ad improbum finem revertuntur et deducuntur': *Liber contra*, Prologue, [A], p. 475.

<sup>11</sup> For historiography on Speroni, see *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 60, n. 1; and Massimiliano Guareschi, 'Ugo Speroni e la tradizione storiografica', in *Storia ereticale e anti-eretice del medioevo*, ed. by Grado G. Merlo (Torre Pellice: Società di studi valdesi, 1997), pp. 24–48 (esp. p. 45, n. 102). For studies on the impact of this litigation on Speroni's anti-Church views, see Pierre Racine, *Plaisance du Xème à la fin du XIII ème siècle: essai d'histoire urbaine*, 3 vols (Lille: Reproduction des Thèses, Université de Lille, 1980), III, pp. 333–40, 355, 384, 392–93; Pierre Racine, 'Il movimento ereticale', in *Storia di Piacenza: Dal vescovo conte alla signoria (996–1313)*, ed. by Piero Castignoli and Maria Angiola Romanini (Piacenza: Cassa di Risparmio di Piacenza e Vigevano, 1984), pp. 375–90; Pierre Racine, 'La société piacentine au temps de la paix de Constance', in *La pace di Constanza 1183: un difficile equilibrio di poteri fra società italiana impero Milano-Piacenza, 27–30 aprile 1983*, Studi e testi di storia medioevale, 8 (Bologna: Cappelli, 1984), pp. 119–33; E. Nasalli Rocca, 'Dottrine eretiche in Piacenza nei secoli XII e XIII', *Bollettino storico piacentino*, 42 (1947), 1–9; and *Heresies*, ed. and trans. by Wakefield and Evans, p. 29.

<sup>12</sup> '[...] we include in the same perpetual anathema, all who shall have presumed to preach, either publicly or privately, either being forbidden, or not sent, or not having the authority of the Apostolic See, or of the bishop of the diocese; and also all who presume to think, or to teach, concerning the sacrament of the body and blood of our Lord Jesus Christ, or of the baptism, or of the remission of sins, or of matrimony, or of the other sacraments of the Church, otherwise than as the Holy Roman Church teaches and observes': Pope Lucius III, *Ab abolendam*, in *Heresy and Authority in Medieval Europe: Documents in Translation*, ed. and trans. by Edward Peters (Philadelphia: University of Pennsylvania Press, 1980), pp. 170–72 (p. 171).

<sup>13</sup> Guareschi, 'Ugo Speroni', p. 25, nn. 6–7.

denounced by a Catholic writer in Piacenza.<sup>14</sup> The name of Speroni continued to occur regularly in official pronouncements for the remainder of the thirteenth century, for example in the anonymous polemical text of 1235–38 called *Summa contra haereticos*.<sup>15</sup>

The status of the Speronists as recognized espousers of heresy, even if that reputation post-dated the actual composition of the work, raises questions as to the audience of *Liber contra*. Although the *Liber contra* is ostensibly directed to Speroni alone, the intended audience is possibly broader. Following the prologue, in which Vacarius directly names Speroni, he continues to address his former colleague in the second person singular, but it seems likely that Speroni's co-religionists were also the target of Vacarius's words. Da Milano notes that what is now the unique manuscript of the *Liber contra* had been transcribed (imperfectly) from another manuscript, indicating that the *Liber contra* already existed and was disseminated via several copies.<sup>16</sup> Although such evidence of manuscript survival is notoriously unreliable,<sup>17</sup> the internal evidence of the *Liber contra* also supports the existence of a more general readership. The comprehensive and exhaustive coverage of potential points of error and the clearly defined structure of Vacarius's work indicate that it was intended to

<sup>14</sup> Salvo Burci, a noble layman of Piacenza, composed a polemic in 1235 against heretics in that city, called *Liber supra Stella* (*Book on the Higher Star*), which made reference to Speroni beginning the sect fifty years earlier, that is, in 1185: see *Liber suprastella / Salvo Burci; edizione critica e commento storico*, ed. by Caterina Bruschi (Rome: Istituto storico italiano per il Medio Evo, 2002), p. 112.

<sup>15</sup> The *Summa contra haereticos* described the Speronists' errors as comprising: original sin as residing 'only in the flesh, not in the soul'; 'that before the advent of Christ, good men ascended into glory'; their rejection of the Eucharist in similar manner to the 'Patarines'; and other 'common errors [...] in Book III': see *Heresies*, ed. and trans. by Wakefield and Evans, p. 276. The editors suggest these 'common errors' were: 1) that the Roman Church does not possess the true faith, which exists only in the heretics' church and comes from God and the apostles; 2) that a wicked priest cannot fulfil his office; 3) that oaths are forbidden; 4) that temporal justice is against God's will; and 5) that purgatory does not exist: see *Heresies*, ed. and trans. by Wakefield and Evans, p. 735, n. 43; see also pp. 29, 152.

<sup>16</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, pp. 6, 15.

<sup>17</sup> On the often serendipitous survival of medieval manuscripts, and the difficulty of imputing meaning to this, see Neil Ripley Ker, *Medieval Libraries of Great Britain: A List of Surviving Books*, 2nd edn (London: Offices of the Royal Historical Society, 1964), p. xi, and Kate Harris, 'Patrons, Buyers and Owners: The Evidence for Ownership and the Role of Book Owners in Book Production and Book Trade', in *Book Production and Publishing in Britain 1375–1474*, ed. by Jeremy Griffiths and Derek Pearsall (Cambridge: Cambridge University Press, 1989), pp. 163–99 (p. 165).

instruct Speroni as well as others; it was no mere private letter between friends. It is more akin to the genre of ‘apologetics’ handbooks’, such as Alain of Lille’s *Contra haereticos*.<sup>18</sup>

From Vacarius’s account, it would appear that Speroni had formulated a religious heresy which centred on a concept of predestination, by which salvation, sanctification, and justification were divine gifts to a select few who, by the foreordination/predestination of God, possessed an inner holiness or purity; this, then was a state attainable neither by good works nor sacraments. Conversely, in Speroni’s eyes, those not so selected, the reprobate, would achieve the opposite of justification. As a consequence, Speroni denied the validity of good works, including the sacraments, and particularly baptism, the Eucharist, and confession; he also rejected the sacrament of holy orders and the priesthood because, as he insisted, all priests were bound by sin (or ‘indelibly stained by sin’), so that they defiled rather than sanctified whatever they touched.<sup>19</sup> But, he continued, given the existence of the sacraments, they should be understood ‘spiritually’, and would become invalid if administered by unworthy priests.

Vacarius’s *Liber contra* is a refutation of the unorthodox ideas of his younger friend, generally couched in the language of gentle reproof. This gentle tone is replaced only occasionally with a more urgent and strident attitude. Regardless of tone, however, Vacarius consistently deals with Speroni’s ideas systematically: he begins with a brief summary of the offensive concept, along with its scriptural ‘authority’; then he provides a rebuttal argument, also based on scriptural authority as well as implicit patristic authority. The explicitness of this dialectic structure has enabled the modern editor of the text to break down each of Speroni’s and Vacarius’s arguments by *capitula* and sub-section.<sup>20</sup>

<sup>18</sup> Alain of Lille, *De fide catholica: contra haereticos, Valdenses, Iudaeos et paganos*, in PL: 210, cols 306–430.

<sup>19</sup> *Heresies*, ed. and trans. by Wakefield and Evans, p. 29.

<sup>20</sup> The scribe of the extant manuscript of the *Liber contra* distinguished various sections in the prologue by rubrics, which in turn the editor identified by capital letters in square brackets, which I reproduce as follows: ‘Prologue, [A]’. Likewise, sections (*capitulae*) in the body of the treatise are similarly represented, but with Roman numerals, e.g. §XIX. These are then subdivided into sub-sections and represented by square brackets which either enclose capitalized Roman numerals (for Speroni’s ideas), e.g. §XIX [I]; or Arabic numerals (for Vacarius’ responses), e.g. §XIX [1]: *L’Eresia di Ugo Speroni*, ed. by Da Milano, p. 13. For the purposes of modernization, I have changed the section numbers in the body of the text to Arabic numbers, but retained the differentiation between Speroni and Vacarius, e.g. §19 [I] for Speroni and §19 [1] for Vacarius.



Vacarius begins the prologue to the *Liber contra* by outlining the three sacramental matters that will dominate the work, namely holy orders, baptism, and the Eucharist.<sup>21</sup> Underpinning these matters, however, Vacarius notes Speroni's idiosyncratic notion that justification will take place by predestination alone, without the need for good works.<sup>22</sup> In addition, he sets out Speroni's flawed understanding of who could be a Christian, and the inefficacy of ecclesiastical orders and institutions.<sup>23</sup> The main body of the *Liber contra* discusses these ideas in more detail, although considerable overlap and repetition occur as a result of Vacarius taking an argument-by-argument approach to the ideas of Speroni's non-extant piece, rather than a thematic one. The treatise comprises thirty-two sections (*capitulae*), of which twelve (including the first eight) relate to 'unworthy' priests,<sup>24</sup> thirteen to baptism,<sup>25</sup> six to the Eucharist,<sup>26</sup> and the final one to christology.<sup>27</sup> Discussion of the sacraments of confession, baptism, and the Eucharist occupies all but seven sections of the treatise, while justification takes up eight.<sup>28</sup>

A word on Vacarius's sources in the *Liber contra* is in order, for they demonstrate his reach across legal, biblical, and patristic authorities. By far the greatest number of sources (almost ninety per cent) identified by Da Milano, are biblical texts. Within these references, New Testament citations appear almost three times as often as Old Testament ones. In addition, patristic texts make up

<sup>21</sup> On priests, see *Liber contra*, Prologue, [B]–[C], pp. 475–76, and [F]–[G], pp. 478–79; on baptism, Prologue, [D], p. 477; and on the Eucharist, Prologue, [E]–[F], pp. 477–79.

<sup>22</sup> On predestination, see *Liber contra*, Prologue, [C], p. 476; on predestination vis-à-vis works, Prologue, [H]–[I], pp. 480–81.

<sup>23</sup> On religiosity, see *Liber contra*, Prologue, [G], p. 479; on orders and institutions, Prologue, [G], pp. 479–80.

<sup>24</sup> *Liber contra*, §§1–8, pp. 483–99; §19–20, pp. 521–44; §26, pp. 552–53; §28, pp. 557–60.

<sup>25</sup> On baptism see *Liber contra*, §9, pp. 499–50; §11–13, pp. 502–13; §15, p. 516; §18, pp. 519–21; §31, pp. 565–72; on baptism (particularly of infants) and Original Sin, §§16–17, pp. 517–19; §28, pp. 557–60; and on baptism and circumcision, §13, pp. 510–13; §18, pp. 519–21; §23, pp. 547–48.

<sup>26</sup> *Liber contra*, §10, pp. 501–02; §§19–20, pp. 521–44.

<sup>27</sup> *Liber contra*, §32, pp. 572–83.

<sup>28</sup> Four sections of the *Liber contra* deal with justification and its relationship to predestination (§8, pp. 497–99; §12, pp. 506–10; §17, pp. 518–19; §31, pp. 565–72); four with its link to works (§24, pp. 548–50; §27, pp. 553–57; §30, pp. 562–65; §31, pp. 565–72). Much of the remainder of the treatise treats those who could be Christians (§§21–22, pp. 544–47; §25, pp. 550–52); ecclesiastical orders and institutions (such as holy days: §27, pp. 553–57; buildings, bells, etc: §19, pp. 521–31); confession (§31, pp. 565–72), and the last section deals with christology (§32, pp. 565–72).

less than ten per cent of Vacarius's sources, mostly stemming from Augustine and pseudo-Jerome (actually Paschasius Radbertus), with only one reference to the contemporary *Sentences* of Peter Lombard. Most surprisingly, there is no direct reference to Gratian's *Decretum*, an apparently significant oversight given Vacarius's subject matter. Further, there are only some twelve references to Roman law sources. Such findings, however, must be treated with caution, since Da Milano was no canonist himself, and edited the text much in the manner of a biblical exegesis. The following historiographical discussion will furthermore reveal how scholarly treatments of this text and its protagonists have failed to cast much light on its exploration of legal-theological interaction.

### Historiography on Speroni

Hugo Speroni and his controversial ideas, which Vacarius highlights in the *Liber contra*, were little-known or understood before Da Milano's edition and commentary. Da Milano's study enabled Speroni, sometime consul of the city of Piacenza between 1165–67, to be identified as the heresiarch of the Speronists.<sup>29</sup> In addition, the discovery of Salvo Burci's *Liber supra stella*, composed in 1235, identified Hugo Speroni as the founder of the sect fifty years previously, in 1185, and showed that the Speronists survived until 1235.<sup>30</sup> Prior to this time, although thirteenth-century papal and empirical records had made abundant references to the *Speronistas* as an heretical sect,<sup>31</sup> scholarship which

<sup>29</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, pp. 44–45. Guareschi noted, however, that Da Milano did not investigate the diplomatic material concerning Speroni's life as a Piacenzan citizen: Guareschi, 'Ugo Speroni', p. 41.

<sup>30</sup> Although Da Milano discovered the manuscript of this work, Magellanus (De Nemore), in the Biblioteca Laurenziana, in Florence, he only produced a partial edition: *L'Eresia di Ugo Speroni*, ed. by Da Milano, pp. 41–46; Iarino Da Milano, 'Il Liber supra "Stella" del piacentino Salvo Burci contro I catari e altre correnti ereticali', in his *Eresie medioevali. Scritti minori* (Rimini: Maggioli, 1983), pp. 329–67. A full critical edition now appears in *Liber suprastella*, ed. by Bruschi.

<sup>31</sup> They are listed in *L'Eresia di Ugo Speroni*, ed. by Da Milano, pp. 38–39, nn. 1–3: statute of Frederick II in 1220; the 1232 Constitution of Ravenna (which repeated *verbatim* the earlier statute of 1220); edicts promulgated between 1238–39, which confirmed in Innocent IV's papal bull of 1243; *Cum adversus haereticam pravitatem*, in 1252 and 1254; Nicholas IV's bull of 1288; a document of Gregory IX in 1229, *Excommunicamus et anathematizamus*, inserted in the *Decretali* of Gregory IX; Gregory IX's bull, *Solent haeretici*, of 1231; Innocent's bull, *Noverit universitas vestra*, of 1254 (repeated by Alexander IV in 1258 and 1260, and by Nicholas IV in

post-dated this time used the Speronists as an exemplar in Reformation and Counter-Reformation historiographical polemic. Early modern pro-Reformation writers sought to explain the Speronists as forerunners of the true Reformed Church, that is as a group missionized by the Waldensian church through the ministry of Espernon, a follower of Waldo of Lyons. Pro-Catholic writers, on the other hand, sought to depict the sect as simply indicative of a general anti-Church movement in the twelfth and thirteenth centuries, which rose again in the Reformation.<sup>32</sup>

Subsequent scholarship, while fulfilling the task of explaining the nature of Speronism, has provided no detailed study or significant insight into the legal-theological elements in the Speroni-Vacarius dialogue.<sup>33</sup> Da Milano focused on the theological implications of Speroni's ideas, particularly his unique understanding of predestination, possibly to the detriment of the historical context informing these theological debates.<sup>34</sup> Herbert Grundmann, following this approach, understood Speroni in the context of the twelfth-century apostolic 'movement' for religious reform, with anti-sacerdotalism as its driving force, and leading to an extreme theological position on predestination.<sup>35</sup> This zealotry manifested itself either in the heresy of the Cathars, Poor Lombards, and Waldensians, or in the orthodoxy and relative safety of the reformist tendencies of the Franciscans and Cistercians.<sup>36</sup>

1288 and 1291). In addition, the Dominican inquisitor Stephen of Bourbon (d. c. 1261) referred to the Speronists in his reports dating to the first decades of the 1200s. Further, knowledge of the Speronists reached Germany via the Franciscan preacher Berthold of Ratisbon (d. 1272).

<sup>32</sup> Guareschi, 'Ugo Speroni', pp. 25–37.

<sup>33</sup> See Guareschi's comprehensive survey of the historiography in his 'Ugo Speroni', pp. 42–48.

<sup>34</sup> An example is Da Milano's concluding remarks on Speroni's ideas of a fixed state of predestination as bringing salvific justification; he notes its uniqueness in the twelfth century, but its similarity with the Protestantism of Luther and Calvin. See *L'Eresia di Ugo Speroni*, ed. by Da Milano, pp. 200–01.

<sup>35</sup> Herbert Grundmann, 'Nuovi contributi alla storia dei movimenti religiosi', in *Movimenti religiosi nel Medioevo*, ed. by Herbert Grundmann (Bologna: Il Mulino, 1984), pp. 446–65; Herbert Grundmann, *Ketzergeschichte des Mittelalters* (Göttingen: Vandenhoeck & Ruprecht, 1963), p. 20. See also Raffaello Morghen, 'L'eresia nel medioevo', in his *Medioevo cristiano*, 2nd edn (Rome: Laterza, 1987), pp. 189–249.

<sup>36</sup> Giovanni Miccoli, 'La storia religiosa', in *Storia d'Italia*, ed. by Giovanni Miccoli, 6 vols in 10 (Turin: Einaudi, 1972–76), II, part 1, pp. 647–48; Malcolm Lambert, *Medieval Heresy: Popular Movements from the Gregorian Reform to the Reformation*, 2nd edn (Oxford: Blackwell, 1992), pp. 81–82. Lambert noted that both Cathars and Waldensians had their origins in a 'lay'

But, proceeding from Johannes Fried's consideration of Speroni as 'citizen and legist' in terms of his engagement in the legal, political, and social issues confronting twelfth-century Lombard Italy,<sup>37</sup> Massimiliano Guareschi has concluded that Vacarius and Speroni were representative of a group of intellectuals who combined the disciplines of theology and Romano-Justinianic law, possibly representing the hermeneutic of the 'Romano-Justinianic law theologian'.<sup>38</sup> In this they were unique among twelfth-century civilian lawyers, who, as a rule, were narrowly confined to their *leges* and not engaged in canon law or theology.<sup>39</sup>

### Historiography on Vacarius and the *Liber contra*

The starting-point for any study of the *Liber contra* is the commentary which accompanies Da Milano's edition of the text.<sup>40</sup> Da Milano's study is the only monograph-length study devoted to any of Vacarius's extra-legal works. It is an extremely detailed exposition of the *Liber contra*; indeed it is almost a paraphrasing of the text.<sup>41</sup> Da Milano concluded that the treatise was 'unscholastic' because it was 'polemical'; he saw these two descriptors as mutually exclusive and oppositional. Thus, he shared Southern's view (expressed in relation to the *Tractatus de assumpto homine*) that Vacarius wrote his treatise independently of any recognized 'school'. Da Milano referred to several characteristics of the *Liber contra* which demonstrated that Vacarius's work was not an 'organic' scholastic treatment.<sup>42</sup> It lacked a systematic ordering or interconnecting of the various heads of doctrine, which changed, discontinued,

heresiarch.

<sup>37</sup> Johannes Fried, *Die Entstehung des Juristenstandes im 12. Jahrhundert: zur sozialen Stellung und politischen Bedeutung gelehrter Juristen in Bologna und Modena* (Cologne: Böhlau, 1974), p. 67.

<sup>38</sup> Massimiliano Guareschi, 'Gli incontri di un canonico legista: Magister Vacarius teologo e polemista', *Rivista di storia e letteratura religiosa*, 36 (2000), 381–414 (p. 390). Guareschi notes, however, that there could be no paradigmatic value to Vacarius and Speroni in the sense of promoting a 'school' of such civilian-theologians, since they were not emulated by others.

<sup>39</sup> Guareschi, 'Ugo Speroni', p. 47.

<sup>40</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, pp. 37–48. See also *Heresies*, ed. and trans. by Wakefield and Evans, pp. 29–30, 152–58.

<sup>41</sup> Guareschi, 'Ugo Speroni', p. 40.

<sup>42</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 64.

or repeated themselves according to the polemical point being made.<sup>43</sup> Vacarius's specificity and narrow polemical ambit made his work more 'controversialist' than scholastic.<sup>44</sup>

The subheadings Da Milano provided in his commentary show his attempt to fit Vacarius's and Speroni's ideas into a late medieval neo-Thomistic scholastic schema, by which measure both fall short. In addition, the affectionate sentiment and cordial tone of the introduction, indicative of the friendship between Speroni and Vacarius when they were in the schools at Bologna together some thirty years earlier, gave the piece a particularly personal tone which, for Da Milano, made it 'unscholastic'.<sup>45</sup> The dialogue form and analytical progression of his rebuttal, however, gave the work some measure of scholastic method.<sup>46</sup> Nevertheless, Da Milano concluded that, on the basis of Vacarius's methodology (in particular Vacarius's failure to use contemporary authorities), the work's strongly apologist tone, its *ad hoc* and unsystematic ordering and choice of argumentation, its use of direct address to Speroni, and its lack of patristic authorities and theological tradition, meant that it was isolated and independent from any school or particular tendency.<sup>47</sup>

Guareschi noted two limits to Da Milano's study.<sup>48</sup> The first was that Da Milano contrasted the theological, ecclesiological, and sacramental position of Speroni and Vacarius with dogmatic Roman Catholic belief formulated in the thirteenth century; a kind of 'theological determinism'. The second was that Da Milano failed to provide the historical context in which Speroni's arguments were made, thus reducing Speroni's thought to a series of propositions divorced of context. This non-'morphological' approach was exacerbated in a later work by Da Milano, in which he compared the Speronists to other 'predestination' heretics such as Wyclif and Hus, even though they post-dated Speroni by some centuries.<sup>49</sup>

Southern believed that showed Vacarius 'as a thoughtful, well-read, orthodox man, who disapproved of modern novelties as far as he knew them, and retained, without having much scope for its practical use, a predilection for Romano-

<sup>43</sup> Ibid., pp. 64–65.

<sup>44</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 106.

<sup>45</sup> Ibid., pp. 98–100.

<sup>46</sup> Ibid., p. 104.

<sup>47</sup> Ibid., pp. 108–09.

<sup>48</sup> Guareschi, 'Ugo Speroni', p. 40.

<sup>49</sup> For criticism of this study, see Grundmann, 'Nuovi contributi alla storia', p. 449.

Justinianic law'.<sup>50</sup> In the context of Southern's study of scholastic humanism in the twelfth century, Vacarius was 'one of the many men in late twelfth-century England who, after showing promising abilities in one or more of the great schools, became more or less totally immersed in the practical work of government and in local affairs'.<sup>51</sup> From Southern's evaluation of the *Tractatus de assumpto homine* and the *Summa de matrimonio* as 'uncharacteristic of scholastic practice' and detached from 'a scholastic environment' respectively, we may safely conclude that Southern, like Da Milano, felt that this same characteristic of independence infused the *Liber contra*.<sup>52</sup>

Other scholars have largely agreed with Southern's views that the work was 'independent' of scholastic teaching of the twelfth century, and moreover, aberrant, in the sense of applying Romano-Justinianic law to 'alien material' such as heresy — subject matter uncharacteristic of the attentions of a Romano-Justinianic jurist.<sup>53</sup> Kuttner and Rathbone accused Vacarius of having no interest in canonistic science on the basis that he overlooked the problem of 'the sacramental power of unworthy priests', as that issue was debated by canonists such as Gratian and the decretists. Instead, they argued, Vacarius used 'a number of rather ill-fitting civilian similes'.<sup>54</sup>

Recently, however, Guareschi has moved away from the tendency to examine Vacarius in terms of perceived paradigms in scholasticism and canonistic

<sup>50</sup> Richard W. Southern, *Scholastic Humanism and the Unification of Europe. Volume 2: The Heroic Age* (Oxford: Blackwell, 2001), p. 165, hereafter cited as Southern, *Scholastic Humanism: The Heroic Age*.

<sup>51</sup> Southern, *Scholastic Humanism: The Heroic Age*, p. 165.

<sup>52</sup> *Ibid.*, p. 163.

<sup>53</sup> Peter Stein, 'Vacarius and the Civil Law', in *Church and Government in the Middle Ages: Essays Presented to C. R. Cheney*, ed. by D. E. Luscombe and others (Cambridge: Cambridge University Press, 1976), pp. 119–37 (pp. 133–34); repr. in *The Character and Influence of the Roman Civil Law: Historical Essays*, ed. by Peter Stein (London: Hambledon Press, 1988), pp. 167–85.

<sup>54</sup> Stephan Kuttner and Eleanor Rathbone, 'Anglo-Norman Canonists of the Twelfth Century', *Traditio*, 7 (1949–51), 279–358; repr. as 'Retractiones VIII', in *Gratian and the Schools of Law 1140–1234*, ed. by Stephan Kuttner (London: Variorum, 1983), pp. 23–38. The co-authors cite five passages from the *Liber contra* as examples: §1 [3], p. 486; §2 [1], p. 489; §5 [II–2], p. 494; §11 [1], p. 503; §13 [3], pp. 511–12. The first two deal with the distinction between the office and the person of a priest, while the remaining three treat a priest's sacramental power.

science.<sup>55</sup> Guareschi suggested that pre-existing scholarship traditionally recognized two categories: first, medieval authors who applied both canon law and theology, and second, others who combined canon law and Romano-Justinianic law.<sup>56</sup> Vacarius and Speroni, he argued, were representative of a third group, namely those who combined the disciplines of theology and Romano-Justinianic law.<sup>57</sup> Vacarius and Speroni, according to Guareschi, represented a unique hermeneutic of the 'Romano-Justinianic law theologian'.<sup>58</sup> Guareschi noted, however, that there could be no paradigmatic value to Vacarius and Speroni in the sense of promoting a 'school' of such civilian-theologians, since they were not emulated by others.

He identified two predominant gaps in scholarship concerning Speroni. The first was a failure to analyse Speroni's doctrine against the particular context in which it was formulated, as well as against contemporaneous theological and doctrinal thought, in order to verify its novelty or otherwise. The second was to establish whether Speroni and Vacarius, as trained civilian lawyers who engaged in a theological discourse, were exceptions to the traditional notion of twelfth-century civilian lawyers as narrowly confined to their *leges* and not engaged in canon law.<sup>59</sup> This chapter therefore aims to fill some of these gaps identified by Guareschi.

By building on Guareschi's tentative findings, this chapter will also demonstrate that Vacarius's mode of argument employs orthodox scriptural exegesis, Roman law analogies, Roman and canon law normative precepts, orthodox theological reasoning, and dialectical disputation, including logic in particular. It is a text that admirably showcases the methods of the lawyer-theologian.

<sup>55</sup> Massimiliano Guareschi, 'Ugo Speroni e l'eresia speronita: aspetti teologici, ecclesiologici e sacramentali' (unpublished doctoral dissertation, State University of Milan, 1991); Guareschi, 'Ugo Speroni', pp. 24–28; Guareschi, 'Gli incontri', pp. 385, 390–91, 412–14.

<sup>56</sup> The 'canon law-theology' epistemological paradigm was established in the writings of De Ghellinck and Grabmann, whilst that of the 'canon law-Romano-Justinian law' was established by Legendre and Paradisi: see Guareschi, 'Gli incontri', pp. 384–85, for bibliography.

<sup>57</sup> Guareschi, 'Gli incontri', p. 385. Guareschi also suggested that a 'morphological' or diachronic approach, that is, a study based on institutional categories, might assist. He conceded, however, that such an approach was not suited for the fractured and varied religious experience of twelfth century Europe: Guareschi, 'Ugo Speroni', p. 47.

<sup>58</sup> Guareschi, 'Gli incontri', p. 390.

<sup>59</sup> Guareschi, 'Ugo Speroni', p. 47.

## *Part II: Sacramental Matters: Holy Orders*

### **Background: Unworthy Priests**

Speroni's concept of inner justification inevitably led him to reject the need for clergy to assist in the salvific programme of mortal souls. His anti-sacerdotal attack took a number of fronts. First, he observed that priests in his day had defects in the form of vices. These defects, he said, were akin to the vices which affected the priests of the Old Law, with the effect that such priests were separated from God and were not priests.<sup>60</sup> Speroni suggested secondly that these unworthy (*indignus*) or impure (*immundi*) priests would pollute whomever they touched for the purposes of purifying. In other words, they would transmit their sins to others whom they touched,<sup>61</sup> and so polluted, they would in turn pollute the souls of others, just like bodily pollution. Third, under the axiom 'Only the pure can purify', Speroni argued that unworthy priests could not purify, that is baptise.<sup>62</sup> Fourthly, he argued that priests could not perform the Mass, since, if they were unworthy, they had 'fellowship with the unclean'.<sup>63</sup> Fifth, on a fundamental level, Speroni took issue with the divide between clergy and laypeople, suggesting that such a separation caused a schism within the Church.<sup>64</sup>

Vacarius challenges Speroni in the latter's assertion that *all* priests were sinful and morally corrupt.<sup>65</sup> Speroni, he charges, has no idea of the extent of corruption among the clergy in Piacenza, Speroni's own home city.<sup>66</sup> As Vacarius's nephew, and Speroni's messenger, Leonardus, reported, no priest in that city had been accused of drunkenness or fornication, not even on suspicion of these wrongs, except for a few — no more than three or four — who had been named on suspicion of fornication.<sup>67</sup> This anecdotal argument aside, Vacarius

<sup>60</sup> 'Primo plura et varia sacerdotum Veteris Legis vicia per Prophetas propones, per que vicia seperabantur a Domino': *Liber contra*, [B], p. 475.

<sup>61</sup> *Liber contra*, [C], pp. 476–77.

<sup>62</sup> 'Quod solus mundus mundetur': *Liber contra*, [C], p. 476; '[...] immundi, fornicators et avari ad baptizandum reprobi sunt': *Liber contra*, §9 [1], p. 499; '[...] quod parvitas vel sanctitas baptizantis purificet baptizantum': *Liber contra*, §9 [3], pp. 500–01.

<sup>63</sup> *Liber contra*, [F], pp. 478–79.

<sup>64</sup> *Liber contra*, §28, pp. 557–60.

<sup>65</sup> 'Tu enim sic loqueris quasi omnes sint pleni scleribus et maculati': *Liber contra*, §14 [1], p. 513 [my emphasis].

<sup>66</sup> *Liber contra*, §25 [1], pp. 552–53. Speroni had been a consul of the city of Piacenza for various periods between 1164–71: *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 59, n. 1.

<sup>67</sup> *Liber contra*, §26 [1], p. 553.



also dealt with each of Speroni's claims on a doctrinal level. Vacarius was particularly attentive to these arguments of Speroni, since he himself was a cleric, in the sense of an ordained priest.<sup>68</sup>

Speroni's anti-sacerdotal views centred on his rejection of a role for those priests who were *indignus* or unworthy. His comments bring to mind the so-called 'Code of Holiness', comprising Leviticus 17–26, which set down strict codes of behaviour for priests.<sup>69</sup> In this way Speroni showed his disdain for the priesthood as comprising persons unworthy to be clergy because of their corrupt qualities. Speroni listed the vices which, for him, made priests unworthy: drunkenness (*ebrietas*),<sup>70</sup> fornication,<sup>71</sup> adultery,<sup>72</sup> greed or simony (*avaritia*),<sup>73</sup> false preaching,<sup>74</sup> dishonesty, thievery, homicidal tendencies, and mendacity (*periuria*).<sup>75</sup> His arguments against priests were threefold: first, priests who possess moral defects should not and could not be priests in the Church; second, there is no need for a separate clergy anyway; and third, that such unworthy priests lack the power to validly administer the sacraments.

The anti-clerical nature of Speroni's comments invite comparison with contemporary heresies of the twelfth century. Robert I. Moore and others have suggested that Speronism 'revived' the heresy of Arnold of Brescia (c. 1100–55), who insisted on the right of lay preaching and advocated poverty as the essential

<sup>68</sup> He used the phrase 'nos clerici': *Liber contra*, §27 [2], p. 554. Da Milano extrapolated from this that Vacarius used *clericus* in the strict sense to mean 'ordained cleric': *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 84–85.

<sup>69</sup> Peter Landau, 'Das Weihehindernis der Illegitimität in der Geschichte des kanonischen Rechts', in *Illegitimität im Spätmittelalter*, ed. by Ludwig Schmugge, Schriften des Historischen Kollegs, Kolloquien, 29 (Munich: Oldenbourg, 1994), pp. 41–53 (pp. 1, 45).

<sup>70</sup> *Liber contra*, §1 [I], p. 483.

<sup>71</sup> *Liber contra*, §9 [I], p. 499.

<sup>72</sup> *Liber contra* §1 [I], pp. 483–84. Clergy who were ordained were not permitted to marry, although they were allowed to live in continence with those they had married prior to reaching the status of deacon. In this event, if they had sexual intercourse with another woman, their act was 'adultery'. In most instances, however, clergy above the rank of deacon were unmarried; in their case, sex with any woman constituted fornication.

<sup>73</sup> *Liber contra*, §1 [I], p. 483; §9 [I], p. 499.

<sup>74</sup> *Liber contra*, §1 [I], p. 483: '[...] *prophete enim propheteabant mendacium* [...]'; §9 [I], p. 499: 'Et si rex potest esse hypocrita, cur non et sacerdos?'

<sup>75</sup> 'Sive autem probus, sive improbus quis sit, sive fur et latro et adulter et homicida et periurus et avarus omnique vicio plenus [...]': *Liber contra*, §1 [I], p. 484.

condition of true priesthood.<sup>76</sup> Raoul Manselli too linked Speronism to the urban anti-sacerdotalism popularized by Arnold's followers,<sup>77</sup> and there is evidence from local records to suggest that Speroni's heterodoxy proceeded from a long line of Piacenzan anti-clericalism, possibly from the Ghibelline anti-papalism entrenched there.<sup>78</sup> It appears to have more than a passing resemblance, however, to a religious movement of the later eleventh century in the Pataria region, near Milan, and in nearby northern Italian cities. This movement agitated for reform of the local secular clergy, which it perceived as dogged by simony and unchasteness. Its proponents even held that the sacraments conferred by such corrupted clergy were invalid and lacking in efficacy. Their tendencies found favour with the late-eleventh-century papal reformers, and hence they were not strictly 'heretics'. By the twelfth century, they had largely disappeared, although their concerns of ecclesiastical interference in lay politics and the invalidity of sacraments conferred by unworthy clergy had been revived by the Arnoldists.<sup>79</sup>

In contrast to Speroni, who made no calls for priests to disown property or give up their secular powers, Arnold's policy on anti-clericalism was inextricably linked with a call for the delimitation of clerics' secular jurisdiction and their replacement by a virtuous Roman secular state.<sup>80</sup> This is apparent from Otto of Freising's *Deeds of Frederick Barbarossa* (composed 1155), describing Arnold's calls for the confiscation of priestly property:

For he used to say that neither clerics who owned property, nor bishops that had regalia, nor monks with possessions could in any wise be saved. All these things belong to the *prince*, and should be bestowed of his beneficence for the use of the laity only [...]. Wherefore he advocated that [...] [n]othing in the administration of the city was the concern of the Roman pontiff; the ecclesiastical courts should be enough for him.<sup>81</sup>

<sup>76</sup> Robert I. Moore, *The Origins of European Dissent* (London: Allen Lane, 1977), pp. 226–27; Raniero Orioli, 'Le correnti spirituali del regno d'Italia', *Bullettino dell'Istituto storico italiano per il medio evo e Archivio Muratoriano*, 96 (1990), 290–91.

<sup>77</sup> Raoul Manselli, 'Profilo della storia religiosa italiana del XII secolo', in his *Il secolo XII: religione popolare ed eresia* (Rome: Jouvence, 1983), pp. 311–31.

<sup>78</sup> Guareschi, 'Ugo Speroni', p. 42, n. 91; see also Lambert, *Medieval Heresy*, pp. 81–82.

<sup>79</sup> On the Patari, see Peter Diehl, 'The Papacy and the Suppression of Heresy in Italy, 1150–1254' (unpublished doctoral dissertation, University of California, 1991), pp. 29, 36 n. 42, 66, 89, 91, 101–02, and the works cited therein.

<sup>80</sup> *Heresy and Authority*, ed. and trans. by Peters, p. 78.

<sup>81</sup> Otto of Freising, 'Deeds of Frederick Barbarossa', in *Heresy and Authority*, ed. and trans. by Peters, pp. 79–80 [my emphasis added].

The Waldensians, whose interpretation of the Gospels not only sought a purification and apostolicization of the Church clergy, but went further in espousing lay preaching and absolute clerical poverty, were also distinct from Speroni. Speroni did not advocate any ideal of preaching nor of spreading the Gospels; in addition, he made no proscriptions on property or marriage.<sup>82</sup> These features of Speroni's ideas also distinguish him from any apparent identification with the Humiliati, an urban lay movement in Italy in evidence after 1179, which unsuccessfully sought papal approval for their desire to lead a life in community, preaching the Gospels, living in poverty, and placing an absolute ban on oaths.<sup>83</sup> Thus, Speroni's anti-sacerdotalism differs in many ways from the 'evangelical heresies' of the twelfth century.<sup>84</sup>

### Unworthy Priests Not to Hold Holy Orders

Vacarius responds to Speroni's controversial ideas on the clergy by demonstrating the range of resources and precedents in law, theology, and biblical exegesis to which he has access. Significantly, he rebuts one of Speroni's arguments with a legal distinction. Vacarius distinguishes the right of office (*ius officium*) from the personal merit of the person in office (*meritum personae*). To speak of the moral unworthiness of a priest, states Vacarius, is to refer to the merit of the life of the priest, not his right to office (*ius officii*).<sup>85</sup> Vacarius notes his opponent's use of the pseudo-Dionysian distinction between the *ordo* and *virtus* of a priest, although he is at pains to point out that only the first quality, not both, are required in a priest.<sup>86</sup> The priesthood, Vacarius reminds his readers, is a legal office (*officium*); as such it is exercised by a person without reference to

<sup>82</sup> A feature noted in *Summa contra haereticos*, in *Heresies*, ed. and trans. by Wakefield and Evans, p. 276.

<sup>83</sup> Gordon Leff, *Heresy in the Later Middle Ages: The Relation of Heterodoxy to Dissent c. 1250–c. 1450*, 2 vols (Manchester: Manchester University Press, 1967), II, p. 453.

<sup>84</sup> Diehl, 'The Papacy', pp. 76–78.

<sup>85</sup> '[...] notando persone meritum, non ius officii': *Liber contra*, §1 [3], p. 487; see also 'tales asseruit non esse sacerdotes, non propter ius ipsum officii, sed propter meritum persone': §1 [3], p. 486.

<sup>86</sup> *Liber contra*, §1 [III], p. 485; cf. pseudo-Dionysius the Areopagite, *Epistola 8: Demophilo monacho*, § 11, in *Patrologiae cursus completus, series graeca*, ed. by Jacques-Paul Migne, 167 vols (Paris: J.-P. Migne, 1857–76), III, cols 1091–91, cited in *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 485, n. 5.

any natural or moral quality in that person.<sup>87</sup> Thus, although a priest may be impure (*immundus*) through his commission of criminal acts, such as stealing, he nevertheless remains a priest until he is legitimately removed for a proper reason (*ex iusta causa*).<sup>88</sup> No priest could leave their 'office' because of moral unworthiness, only through legal processes.

Vacarius emphasizes that the priesthood, like the offices of *procurator* (a litigation representative) and *dispensator* (an administrator), and even those of a debtor<sup>89</sup> or a *tutor* (guardian),<sup>90</sup> which were all recognized at Romano-Justinianic law, had a legal existence external and independent of the person occupying that office.<sup>91</sup> The holder of one of these offices, Vacarius argues, has a debt to fulfil that office; so too an unworthy priest has a debt to his office, which arises because of the natural and social function of the priestly order which is for the good of the Christian faithful. This debt arose by the nature of the necessity of the office (*necessitas officii*), in which preaching was not something praiseworthy, but rather a task both expected and necessary.<sup>92</sup> Vacarius further compares a priest's office to the *quasi castrense* or *castrense*.<sup>93</sup> The *peculium castrense* was originally a right recognized within Roman law for a soldier to donate or bequeath certain property, particularly war booty, even where he was not yet head of his family and so not strictly capable of holding property. Under Emperor Hadrian the right of *peculium castrense* extended to others serving the *res publicum*, such as clergy, court dignitaries, and lawyers; this widened concept was called *quasi peculium castrense*. The concept was expanded further under Justinian to allow ecclesiastics to obtain quasi-ownership rights over property

<sup>87</sup> 'Non enim ex eo ipso sacerdos vel pastor est aliquis, quod ipse est homo, vel quod boni vel mali meriti est; sed quod legitime ordinatus est': *Liber contra*, §1 [1], p. 484.

<sup>88</sup> *Liber contra*, Prologue, [B], p. 476; cf. §1 [3], p. 486.

<sup>89</sup> '[...] debitor officii remanet obligatus': *Liber contra*, §1 [3], p. 486; § 4, p. 486. Da Milano too noted the similarity between this concept of duty of fulfilment and that concept as it was set out in the *Digest*: 'Qui mandatum suscepit, si potest id explere, deserere promissum officium non debet, alioquin mandatoris intersit damnabitur': *Digest*, 17.1.27.2, in *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 150, n. 1.

<sup>90</sup> *Liber contra*, §1 [3], p. 486.

<sup>91</sup> *Liber contra*, §1 [1], p. 484.

<sup>92</sup> *Liber contra*, §1 [3], 486; cf. 1 Corinthians 9. 16–18: 'For if I preach the Gospel I have nothing to boast of.'

<sup>93</sup> '[...] quasi castrense peculium nominatur, quia in castris Domini militant; sicut seculares milites in castris terreni imperatoris': *Liber contra*, §28 [2], p. 559.

which they acquired either within or outside their clerical duties.<sup>94</sup> Further, Vacarius notes that the priestly office is recognized in Scripture; for example, the Old Testament high priest Eli, although 'spiritually blind' in failing to prevent many people from abandoning the faith, nevertheless remained a priest.<sup>95</sup> Kuttner and Rathbone have remarked on Vacarius's use of such legal analogies as 'ill-fitting', a criticism I will discuss further below.

Speroni made the further assertion that unworthy priests were not only enjoined from the priesthood, but from the community of the Christian faithful, that is, they were no longer Christians.<sup>96</sup> Speroni had argued forcefully that, upon lapsing into sin, whether through fornication or adultery, priests thereby became outcasts from the Christian faithful.<sup>97</sup> Here, Speroni relied on a passage from Ezekiel, that priests who did not possess the moral requirements of the Old Testament priests were not to be called Christians,<sup>98</sup> as well as a part of Jeremiah to the effect that 'profane' priests should be punished and driven into darkness for their destruction and scattering of the sheep who were the Lord's 'pasture'.<sup>99</sup> Further, said Speroni, no one was a Christian or a priest, unless he had the 'Law of God' in his heart.<sup>100</sup> In this way, he interpreted Old Testament texts as requiring priests to be free of sin and morally pure.

Vacarius responds that the Ezekielian text did not mean that the bond between God and the priest had been broken, but rather that a momentary lapse of charity and divine indulgence had occurred, whereby the unworthy priest merely lost charity and other spiritually-infused virtues, but did not cease to be a Christian.<sup>101</sup> In addition, he interprets allegorically the text of Psalms 101. 8 ('Early I will kill all the sinners of the earth') to mean that sinning priests would be judged, not in this world, but the next.<sup>102</sup> The supreme example of this way of thinking was Judas, whom Christ had made a priest, but who had betrayed

<sup>94</sup> Andrew Borkowski, *Textbook on Roman Law*, 2nd edn (London: Blackstone, 1997), p. 115.

<sup>95</sup> 'Ex officio namque Heli pastor erat et filii eius Ophni et Finees sacerdotes Domini dicebatur': *Liber contra*, §1 [2], p. 485; see 1 Samuel (known in the Middle Ages as 1 Kings) 1. 3: 'And the two sons of Heli, Ophni and Phinees, were there priests of the Lord'.

<sup>96</sup> *Liber contra*, [G], p. 479; §1 [I]–[III], pp. 483–85.

<sup>97</sup> *Liber contra*, §1 [III], p. 485.

<sup>98</sup> *Liber contra*, §1 [I], p. 484; cf. Ezekiel 22. 26: 'And I am contaminated in their midst'.

<sup>99</sup> Jeremiah 23. 1, 11–12; *Liber contra*, §1 [III], p. 485.

<sup>100</sup> *Liber contra*, §22 [I], p. 546.

<sup>101</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 153.

<sup>102</sup> *Liber contra*, §1 [3], p. 487.

him.<sup>103</sup> Judas was but one example of 'evil' priests and bishops who retained their office and their status as Christians.<sup>104</sup> As to Speroni's notion that only those who had the law of God 'in their hearts' could be Christians, Vacarius reasons that there must necessarily be some impure Christians, some 'chaff amid the grain'; it was for God alone to judge who had Him in their heart.<sup>105</sup>

Speroni also suggested that, not only were priests to be free from vice, but were also to be 'blessed' (*sanctus*).<sup>106</sup> Only those 'who entered the sheepfold via the gate', in Speroni's eyes, could be admitted into the community of the Lord.<sup>107</sup> Vacarius acknowledges that not all priests are blessed or saint-like.<sup>108</sup> As in previous cases, Vacarius points to examples of historically famous figures who remained Christian ministers even though they were not pure: Saul (who became Paul after his conversion), Solomon, Jeroboam, and Judas.<sup>109</sup>

In addition to expecting priests to be holy (*sancti*), Speroni had added that priests must be 'pure' (*mundi*). On this aspect, Speroni took the Old Testament priests of Melchizedek as paradigms; this order observed spiritual precepts, in contrast to the priests of Aaron, who followed carnal precepts.<sup>110</sup> Speroni linked the notion of *sanctus* to charity in suggesting that a priest without charity was 'nothing', as per the Pauline phrase: 'If I have do not have charity I am nothing'.<sup>111</sup> Vacarius responds that the precepts of the Old Law were no longer followed by priests.<sup>112</sup> Further, in reality, many priests devoted to their office did not necessarily have the mental element of charity. Nor, he adds, do many of those who embody charity or love hold priestly offices.<sup>113</sup> Further, to judge someone as 'nothing' was not a decision for human arbitration, but a matter for God alone.<sup>114</sup>

Vacarius goes on to respond to Speroni's arguments that an unworthy priest does not 'enter the sheepfold by the door' and is therefore a 'thief and robber'

<sup>103</sup> *Liber contra*, §14 [1], p. 513.

<sup>104</sup> *Liber contra*, §21 [III–3], p. 546.

<sup>105</sup> *Liber contra*, §22 [2], p. 547.

<sup>106</sup> *Liber contra*, [G], p. 479; §26 [I], p. 552; §28 [II], p. 559.

<sup>107</sup> *Liber contra*, §2 [I], p. 488; §25 [III], p. 551.

<sup>108</sup> *Liber contra*, [G], p. 479; §25 [3], p. 551.

<sup>109</sup> *Liber contra*, §25 [4], p. 552.

<sup>110</sup> *Liber contra*, §25 [I], p. 550.

<sup>111</sup> 1 Corinthians 13. 2; cf. *Liber contra*, §25 [II], p. 551.

<sup>112</sup> *Liber contra*, §25 [1], p. 550.

<sup>113</sup> *Liber contra*, §25 [1], p. 550.

<sup>114</sup> *Liber contra*, §4 [4], [5], pp. 492–93; §25 [2], [II], p. 551.

(John 10. 1), not a priest. Speroni's point here was that such priests used their power illicitly and, therefore, had no priestly power.<sup>115</sup> Vacarius distinguishes *potentia* and *potestas* by utilizing Romano-Justinianic law. The latter, he observes, is a power recognized at law as legitimate, while the former is *de facto* and without sanction.<sup>116</sup> *Potestas* is of divine origin if instituted through a competent organism set up for that purpose, states Vacarius; this is a notion given force by a passage in John establishing that the legitimacy of entry and its continual retention was necessary for ecclesiastical power as a norm of law.<sup>117</sup> This use of power is not made illegitimate by the personal attributes of the person wielding such power, but by the extent to which that person is legitimately installed in power. Decretists made much of this distinction in the context of bishops' elections: they were concerned to separate the election of a bishop to office from the valid exercise of the power of that office following confirmation of the election.<sup>118</sup> In the *Summa de matrimonio* Vacarius refers to the *traditio* conferring upon the husband, by *mutuo suscipio*, the fully-legitimate power of his office as husband (*plenam potestatem officii*).<sup>119</sup> Vacarius's distinction between the person and the office serves to remind the younger Speroni of his law lessons some years previously, although Kuttner and Rathbone have accused Vacarius of using this Roman law distinction between *potestas* and *potentia* inappropriately to deal with the case of unworthy priests.

Vacarius also argues his point on grounds of language. The priestly office has the power of a name, such that even if a priest is unworthy, he is still called 'priest' and, moreover, still called 'a Christian'.<sup>120</sup> Further, although the etymology of the word 'cleric' (*clericus*) is confirmed by its use in Scripture as someone 'chosen' (*electus*) by God, Vacarius states that this did not support

<sup>115</sup> See quote from *Liber contra*, §1 [1], p. 484 above.

<sup>116</sup> 'Potestas enim iuris est nomen, quo illi omnino carent, licet de facto potenciam habeant': *Liber contra*, §2 [1], p. 489.

<sup>117</sup> *Liber contra*, §2 [1], p. 488; cf. John 10. 9; see also *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 155.

<sup>118</sup> Robert L. Benson, *The Bishop Elect. A Study in Medieval Ecclesiastical Office* (Princeton: Princeton University Press, 1967), p. 60.

<sup>119</sup> *Summa de matrimonio*, §13, in 'Magistri Vacarii Summa De Matrimonio', ed. by Frederic William Maitland, *Law Quarterly Review*, 13 (1897), 133–42 (commentary), 270–87 (text) (p. 275). Hereafter the text will be cited as '*Summa de matrimonio*' and the commentary as '"Magistri Vacarii"', ed. by Maitland.

<sup>120</sup> *Liber contra*, §26 [1], p. 552.

Speroni's claim that a cleric had to be a saint.<sup>121</sup> Vacarius illustrates this with the word 'man' (*homo*) which, although derived etymologically from the word 'ground' (*humus*), did not mean that man was made 'from earth'.<sup>122</sup>

Before moving on to Vacarius's explanation of the need for a separate clergy, I will comment on Kuttner and Rathbone's claim that Vacarius used Roman law analogies inappropriately and without knowledge of canonistic science. In the examples cited, Vacarius compares a priest to a *procurator* or a *tutor* or a *debtor* to indicate that the person and the office are separate; he also compares *potestas* (legitimate power, as distinct from *potentia*, or illegitimate power) to a priest's right to exercise the functions of his office validly, irrespective of his unworthy character. Vacarius uses such Roman law terms knowing his opponent's familiarity with and intellectual deference towards them, so, from a rhetorical and polemical perspective his choice of analogies is apt. In addition, the distinction he draws between *potestas* and *potentia* would have been familiar to canonists concerned with the election of bishops and the practical issue of jurisdiction, a topic I will turn to below in discussions of the sacramental power of priests.

### The Clergy's Separation From the Laity

Speroni argued that the divide between clergy and laypersons split the Church. If clerics and laypersons were united by their freedom, and therefore 'one', unlike slaves and free citizens, then clergy and the laity were also 'one' through baptism.<sup>123</sup> Accordingly, for Speroni, there was no need for a separate order of clergy or a priesthood. Vacarius rebuts such a view as contrary to private and

<sup>121</sup> Two etymological derivations linked *clericus* to the notion of *electus* (chosen), one derived from St Jerome's phrase 'chosen by the Lord by chance' (*in sortem Domini electus*), while the other referred to St Augustine's suggestion that they were chosen by the Apostle Matthew. These were reproduced in Isidore, *Etymologiae*, 7, c. 12, n. 1, in *Isidori Hispalensis Episcopi Etymologiarum sive Originum Libri XX*, ed. by Walter Martin Lindsay, 2 vols (Oxford: Clarendon Press, 1911), I [no pagination], and in Peter Lombard, *Sententiae*, 4, d. 24, c. 4, in *Sententiae in IV libris distinctae*, ed. by Ignatius C. Brady, 3rd rev. edn, 2 vols in 3 (Grottaferrata: Collegium S. Bonaventurae, 1971–81), II, p. 894. See also *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 372, n. 2.

<sup>122</sup> *Liber contra*, §28 [2], p. 559.

<sup>123</sup> *Liber contra*, §28 [1], [1], p. 558.



ecclesiastical law and even public and natural law.<sup>124</sup> He only provides an explanation for public law (*ius publicum*), leaving it to his readers to recognize the remaining terms as commonly understood. Public law, he states, following Book 1 in the *Digest*, pertains to the state of the republic (*quod ad statum rei publice*). He also adds a reference to D.11 in Gratian's *Decretum*, noting that public law includes 'religion (*res sacrae*), priesthoods, and magistracies'.<sup>125</sup> But his understanding is not completely in accordance with the *Digest* or the *Decretum*, for *res sacrae*, he adds, comprise things consecrated by God and common to all, especially for the poor.<sup>126</sup> This implication of common ownership, while perhaps implicit in the *Decretum*, is in contrast with the position taken in the *Digest* that *res sacrae* were *extra patrimonium*, that is, incapable of ownership and belonging to no one (*nullius bonis sunt*).<sup>127</sup>

In explaining this individualistic approach by Vacarius, Da Milano suggested that Vacarius did not consider *res sacra* as a term of property law, but in terms of jurisprudence more generally, that is, to the 'common good'. Vacarius's addition of the phrase 'especially for the poor' confirms this reading.<sup>128</sup> The phrase used in Romano-Justinianic law to describe the common good in this

<sup>124</sup> '[...] non solum iuri privato et ecclesiastico adversaris, sed etiam publico et naturali': *Liber contra*, §28 [1], p. 558. Although Vacarius does not define private law here, it pertained to the welfare of individuals, namely family law and succession, the law of property, and obligations. Further, ecclesiastical law was canon law; the terms were used interchangeably in the twelfth century: *Ius canonicum*, ed. by F. X. Wernz and P. Vidal, 7 vols (Rome: Gregorian University Press, 1923–52), 1, pp. 72–74. Also, natural law was fixed by God and immutable: *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 371, n. 2. Presumably, Speroni's conception of these three terms was correct according to Vacarius's understanding, for he did not trouble to correct them.

<sup>125</sup> 'Publicum ius est in sacris, in sacerdotibus, in magistratibus consistit': *Digest*, 1.1.1.2 (Ulpian), p. 1; cf. 'Ius publicum est in sacris et sacerdotibus et magistratibus' (Public law is in sacred matters, priests, and magistrates): *Decretum*, D. 1, c. 11, col. 3. '[...] ad statum rei publicae refertur et consistit in tribus: in sacris, in sacerdotibus et magistratibus': *Liber contra*, §28 [1], p. 558.

<sup>126</sup> 'Nam sacre res, que Deo sunt consecrate, communes sunt omnium, et praecipue pauperum; et sacerdotes et magistratus ad commune obsequium omnium destinati sunt': *Liber contra*, §28 [1], p. 558. Da Milano also noted that, at Roman law, *obsequium* had the sense of service, which was borne out in *Liber contra*, §28 [2], p. 559, in the phrase 'the service of God' (*Dei obsequio*): *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 370, n. 1.

<sup>127</sup> *Digest*, 1.8.6.2 (Martianus), p. 11; *Institutes*, 2.1.7, p. 10 (Gaius, 2, 9); William J. A. C. Thomas, *Textbook of Roman Law* (Amsterdam: North Holland Publishing, 1976), p. 27.

<sup>128</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 370; 'et praecipue pauperum': *Liber contra*, §28 [1], p. 558.

sense was *utilitas*.<sup>129</sup> Vacarius uses this phrase, and the notion of necessity, to describe the need for laws in both the public and private spheres.<sup>130</sup> Getting back to the issue of why there ‘needed’ to be a separate clergy, Vacarius notes that, in the days of the Apostle Paul, it was necessary for priests and deacons to observe a communal and segregated way of life due to the small Christian population and constant threat of persecution.<sup>131</sup> These elements of necessity and common good also appear as familiar themes in Vacarius’s other works. In the prologue to the *Liber pauperum*, he notes the work is ‘especially destined for the poor’.<sup>132</sup> Further, he observes that the excerpts gathered therein are for the good of all in promoting knowledge and necessary for their everyday usefulness or *utilitas*.<sup>133</sup> In his *Summa de matrimonio*, likewise, it is the *utilitas communis*, namely, the state of confusion on the marriage question, which compels him to write his critique.<sup>134</sup>

Vacarius further argues the need for a separate clergy, on the basis that there is diversity in unity. The Church allows many different ways of life (*vitae*), such as the paths taken by monks, canons, and both male and female religious orders (*ordines*). Even the angels, he points out, were divided into nine separate orders.<sup>135</sup> But Vacarius insists that these divisions do not break the unity of the

<sup>129</sup> The *Digest* noted that either *necessitas*, *consensus*, or *consuetudo* was required for every law: *Digest*, 1.3.40, p. 6 (Modestinus). See *L’Eresia di Ugo Speroni*, ed. by Da Milano, p. 368, n. 2. For consideration of the concept of *utilitas* as a canonical concept in the political sphere, see Gaines Post, *Studies in Medieval Legal Thought: Public Law and the State, 1100–1322* (Princeton: Princeton University Press, 1964).

<sup>130</sup> ‘necessitas et utilitas exigebant ut duplici iure uterentur, scilicet publico et privato’: *Liber contra*, §28 [1], p. 558.

<sup>131</sup> *Liber contra*, §28 [1], p. 558.

<sup>132</sup> ‘[...] pauperibus precipue destinati’: *Liber pauperum*, Prologue, in *The Liber pauperum of Vacarius*, ed. by Francis De Zulueta (London: Selden Society, 1927), p. 1. Hereafter, the text will be cited as ‘*Liber pauperum*’ and the introduction/commentary as ‘*The Liber pauperum*, ed. by De Zulueta’.

<sup>133</sup> ‘quo facile omnes ad boni et equi scientiam prouocarem, ea que magis ad eius artis periciam at usum rerum cotidianarum necessaria mihi uisa sunt’: *Liber pauperum*, Prologue, 1, p. 1.

<sup>134</sup> *Summa de matrimonio*, §1, p. 270. Note that the *Tractatus de assumpto homine* made reference to the ‘love of truth’ only, not the common good: *Tractatus de assumpto homine*, §5, p. 163.

<sup>135</sup> See also other scholastic authors who explained the division into the nine orders: Peter Lombard, *Sententiae*, 2, d. 9, cc. 1–3, in *Sententiae in IV libris distinctae*, ed. by Brady, 1, pp. 345–47.

Church.<sup>136</sup> In conceding that the Church has many internal 'divisions', Vacarius is no doubt referring to the explosion in the variety and form of religious life in the twelfth century, particularly in the monastic orders, which Giles Constable has termed the 'twelfth-century Reformation'.<sup>137</sup> In reaction, Vacarius acknowledges that 'diverse' does not mean 'adverse', a maxim employed by both canonists and theologians in the twelfth century to explain that the unity of the faith does not preclude diversity in the ways in which it can be explained.<sup>138</sup> Speroni had singled out the tonsure of the cleric for criticism which, he indicated, neither justified those priests who were good nor condemned those who were bad. Vacarius rejects such a view.<sup>139</sup> Speroni's argument brings to mind the phrase from Leviticus 21. 5: 'They shall not make any bald place on their heads' in its regulations concerning priestly behaviour, although it is to Galatians 5. 2 that Vacarius refers: 'Indeed I, Paul, say to you that if you become circumcised, Christ will profit you nothing.' Thus Speroni appears to draw an analogy between the tonsure and circumcision, and disputed the salvific efficacy of same.<sup>140</sup>

Like the word 'cleric' (*clericus*), which Vacarius notes, does not signify personal merit or sanctity, but a 'way of living in obedience to God for the common salvation of the body and soul of man',<sup>141</sup> the tonsure simply signifies a way of life or 'order' (*ordo*) of a person, rather than their merit. The tonsure does not purport to justify, and, therefore, cannot be blamed for failing to do so.<sup>142</sup> It instead offers clerics a sign (*signum*) by which they distinguish themselves from laypeople and which indicates that theirs is a way of life different from laypeople; the fact that some of these tonsured clerics could be evil (*malus*) did not mean *all* were.<sup>143</sup> Indeed the tonsure was but a symbol of variety, like the

<sup>136</sup> 'Sic ego nec in hac nostra terrena Ecclesia ordines divisionem faciunt': *Liber contra*, §28 [1], p. 559.

<sup>137</sup> Giles Constable, *The Reformation of the Twelfth Century* (Cambridge: Cambridge University Press, 1996); Southern, *Scholastic Humanism: The Heroic Age*.

<sup>138</sup> Henri De Lubac, 'À propos de la formule: diversi sed non adversi', *Revue des sciences religieuses*, 40 (1951–52), 27–40; Hubert Silvestre, 'Diversi sed non adversi', *Recherches de théologie ancienne et médiévale*, 31 (1964), 124–32; Marcia L. Colish, *Peter Lombard*, 2 vols (Leiden: Brill, 1994), I, p. 399.

<sup>139</sup> *Liber contra*, § 29 [I–I], p. 561.

<sup>140</sup> *Liber contra*, § 29 [II], p. 561.

<sup>141</sup> '[...] vivendi ordo in Dei obsequio, ad communem hominum tam corporis quam anime salutem': *Liber contra*, §28 [2], p. 559.

<sup>142</sup> *Liber contra*, § 29 [II], p. 561.

<sup>143</sup> *Liber contra*, § 29 [2], p. 561.

signs distinguishing laypeople, monks, canons, soldiers, and veterans, all of whom were one in their observation of the Christian faith.<sup>144</sup> Unity in diversity is highlighted once again.

### Sacramental Power of Unworthy Priests

It is apparent from Vacarius that Speroni's anti-sacerdotal and predestinarian views led him to reject the 'sacramental power' of unworthy priests, that is, their ability to confer the sacraments.<sup>145</sup> Speroni argued that unworthy priests could not validly administer the sacraments, and focused particularly on baptism and the Mass. His arguments show no awareness of the ideas of St Augustine, by which it came to be accepted by the Church that the value of the sacrament depended on its correct form, regardless of the faith or worthiness of the minister; Speroni's ideas rather recalled the Donatist heresy against which Augustine had successfully battled. First, he claimed, unworthy priests transmitted sin rather than the sacraments; only 'pure' priests could administer sacraments. Second, their inappropriate partnership (*societas*) with God meant that unworthy priests could not confer the sacraments. Third, such priests did not 'expound God's statutes'.

Speroni posited that the unworthy priests he referred to were forbidden from exercising sacramental power by dint of God's admonition to the Pharisees: 'What right do you have to declare my statutes/Or take My covenant in your mouth'.<sup>146</sup> Vacarius responds, consistent with the views of Augustine, that even unworthy priests can perform the sacraments. Citing the passage from Paul, 'God alone gives the increase', he notes that this is so whether the administering agent is evil or good, whether it is Judas or the Apostle Peter.<sup>147</sup> The Lord did not

<sup>144</sup> '[...] sint omnino unum in fidei observatione': *Liber contra*, § 29 [2], p. 562.

<sup>145</sup> For background to debates on sacramental power, see some of the papers in *Plenitude of Power. The Doctrines and Exercise of Authority in the Middle Ages: Essays in Memory of Robert Louis Benson*, ed. by Robert C. Figueira (Aldershot: Ashgate, 2006).

<sup>146</sup> *Liber contra*, 4 [III], p. 492; Psalms 50. 16.

<sup>147</sup> 'Immo verum dicit, quia non efficit aliquid, sed *Deus solus qui dat incrementum*, interius persuadendo, baptizando, mundando, per ministerium mali sicut et boni scilicet per ministerium Iude Scarioht, sicut per ministerium apostoli Petri. [...] [E]t quod non prohibuit peccatoribus Deus enarrare iusticiam suam, licet eorum notaverit stulticiam, increpando quod frustra narrarent eius iusticias': *Liber contra*, §4 [5], p. 493. Vacarius makes similar comments later in the treatise, this time directing them specifically to the sacrament of the Mass: *Liber contra*, §10 [1], p. 501.

prohibit sinners 'expounding his statutes', for God effects the sacrament, while the minister is mere agent. Therefore, the virtue of the priest is irrelevant, states Vacarius, since the true efficient action is that performed inwardly by God as the principal cause. The secondary, or ministering, cause, performed by the priest, cannot frustrate that effected by the primary cause, namely God. To this orthodox understanding of the minister's role, Vacarius further points to a Roman law analogy to prove his point: a *dispensator* (steward), he notes, has a commission from his or her master to conduct a sale such that any sale by the steward is valid and the master cannot subsequently rescind the sale even if the steward was fraudulent.<sup>148</sup>

According to Speroni's exegesis, unworthy priests did not confer the sacrament but rather conferred sin. This line of thinking, Vacarius reveals, is based on two biblical axioms: 'Whatever the unclean touch they make unclean' from Numbers 19. 22,<sup>149</sup> and its converse 'To the pure all things are pure'.<sup>150</sup> As in his attack on unworthy priests, Speroni recalled the 'Code of Holiness' and the precepts against contamination in Leviticus. By 'purifying', Speroni appears to have meant baptism (and confession) rather than the Eucharist, since the former sacraments involved the 'removal' of Original Sin.<sup>151</sup> Speroni applied the further axiom 'only the pure can purify' here to argue that only pure or worthy priests could baptise, whereas unworthy priests could not.<sup>152</sup>

Vacarius responds to the intentionality implicit in Speroni's argument. It would, he states, be ridiculous for a person who intends to be purified to instead be polluted, whereas a person who did not believe he would be purified would not be polluted. This would favour those who have no faith over those who do.<sup>153</sup> Additionally, continues Vacarius, applying Speroni's axiom 'Whomsoever the

<sup>148</sup> *Liber contra*, § 5 [II-2], pp. 494-95.

<sup>149</sup> '[...] *Quicquid tetigeret immundus immundum facit*': *Liber contra*, rubric to [C], p. 476; and cited again in §7 [II], [III], pp. 496-97; cf. Haggai (Aggas) 2. 13-14.

<sup>150</sup> '*Omnia munda mundi*': *Liber contra*, §7 [2], p. 496; cf. Titus 1. 15.

<sup>151</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 192. It could be argued, equally, that the Eucharist 'purifies', since, according to orthodox understanding, it 'blots out' venial and mortal sin: v. Eucharist, in *Catholic Encyclopaedia: An International Work of Reference on the Constitution, Doctrine, Discipline, and History of the Catholic Church*, 15 vols (New York: Robert Appleton, 1907-12), V, p. 572-90.

<sup>152</sup> 'Tu contra dicis, scilicet quod malus et immundus non purificant, non baptizant, sed mundus solus purificat et baptizat': *Liber contra*, §4 [V], p. 493; 'Probare niteris quod immundi, fornicatores et avari ad baptizandum reprobi sunt': *Liber contra*, §9 [I], p. 499.

<sup>153</sup> *Liber contra*, § 7 [I-1], p. 496.

unclean person touches shall be unclean' leads to a logical anomaly, that *all* are polluted by the impure, even those *pure* at the outset. And the expression 'To the pure all things are pure' did not follow either; for, if *all* are purified by the pure, then even the *impure* are purified.<sup>154</sup> Vacarius notes a similar expression, but with opposite meaning: 'whomsoever the pure touches makes pure'.<sup>155</sup> This maxim he observes, from the Justinian *Code*, means that everyone can be purified by a bishop, since a bishop was elected on the basis of his lifetime purity and humility.<sup>156</sup> This notion, Vacarius stresses, is different from Speroni's fundamental idea that 'only the pure can be purified', a notion with which he could not agree.<sup>157</sup> As an aside, it might be argued, however, that this Roman law principle in fact supported Speroni's moral ideal!

Vacarius amplifies his argument on the sacramental power of the priest. Again confirming the irrelevance of the worthiness of the minister, Vacarius states that one receiving the sacrament is no more or less sanctified if baptised by a better or worse priest, since 'God gives the increase'.<sup>158</sup> Similarly, in the Mass, it is not the case that the body of Christ is perceived 'more' with a good priest and 'less' with a bad priest ministering, since that matter is not capable of comparison.<sup>159</sup> The merit or demerit of the priest adds no efficacy or impediment to the sacramental action.<sup>160</sup> Da Milano has shown that this phrase concerning the merit or evil of the priest appeared in several mid-twelfth-century texts, including the work of Alger of Liège, Gratian's *Decretum*, Peter Lombard's

<sup>154</sup> Titus I. 15; *Liber contra*, § 7 [2], p. 496.

<sup>155</sup> *Liber contra*, § 7 [3], p. 497.

<sup>156</sup> '[...] ita castus et humilis nostris temporibus eligatur episcopus ut [...]': *Code*, 1.3.30 (31).3, p. 22.

<sup>157</sup> *Liber contra*, § 7 [3], p. 497.

<sup>158</sup> 'Hic aperte ostendit Apostolus quod neque eius qui predicando, neque eius qui baptizando ministrat meritum est attendendum, sive sit bonus sive sit malus, quia etiam bonus nichil est, quantum ad effectum, sed solus Deus est aliquid, qui prestat effectum': *Liber contra*, § 9 [3], p. 501.

<sup>159</sup> '[Q]uod nec a bono magis, nec a malo sacerdote minus corpus Domini *percipitur*. Hec verba nec dicimus, nec plane intelligimus; scilicet quid sit magis et minus illud corpus *percipere*, cum res ista comparationem non recipiat': *Liber contra*, § 19 [1], [a], p. 523 [my emphasis]; cf. 'Hic aperte ostendit Apostolus quod neque eius qui predicando, neque eius qui baptizando ministrat meritum est attendendum': *Liber contra*, § 9 [3], p. 501.

<sup>160</sup> 'Illa vero oblatio que cottidie fit in altari ad memoriam passionis et mortis eius, sicut ipse precepit, ex virtute dispositionis eius sola procedit, sine ullius merito boni vel mali ministri, ut sicut boni meritum nichil addit ad efficiendum, ita nec mali meritum detrahat ad impediendum': *Liber contra*, § 19 [1], [e], p. 529.

*Sententiae*, and the anonymous anti-Arnoldist tract known as *Manifestio haeresis catharorum*.<sup>161</sup> But while these texts used *perficio* ('complete', or 'finish'), Vacarius uses *percipio* ('perceive' or 'see'), a uniqueness shared only with Paschasius Radbertus in his *Liber de corpore et sanguine domini*; this led Da Milano to suggest Paschasius was Vacarius's source for the quote. A rationale for Vacarius's chosen terminology, Da Milano conjectured, was that *perficio* emphasized the priest's role in consecrating the host, while *percipio* was used by Vacarius to focus on the recipient's role in receiving the host.<sup>162</sup> Vacarius, however, does not go so far as to suggest that anyone can therefore administer the sacraments: he adds that the Eucharist is a sacrament to be administered by a priest, as attested to in Scripture, and is no mere lay ritual.<sup>163</sup> It should be noted, however, that paleographical error cannot be ruled out as the source of this unusual turn of phrase.

Vacarius next deals with Speroni's suggestion that unworthy priests could not perform the sacraments or baptise because, by doing so, God contracted a partnership (*societas*) with the impious thief or adulterer.<sup>164</sup> As Speroni argued, seeking purification from a priest who was 'polluted in his soul' by fornication or greed or some other shame, meant that the one seeking purification would instead be sullied, just as if by bodily filth.<sup>165</sup> Surely, asks Vacarius rhetorically in reply, since priests minister the sacraments every day, it cannot be said that God

<sup>161</sup> Alger of Liège, *De sacramento corporis et sanguinis*, 1, cc. 1–3, c. 8, in *Alger von Lüttichs Traktat "De misericordia et iustitia": ein kanonistischer Konkordanzversuch aus der Zeit des Investiturstreits*, ed. by Robert Kretschmar (Sigmaringen: Thorbecke, 1985), p. 105; *Decretum*, C. 1, q. 1, c. 77, col. 385; D. 2, c. 72, col. 1342; Peter Lombard, *Sententiae*, 4, d. 13, cc. 1–7, in *Sententiae in IV libris distinctae*, ed. by Brady, II, pp. 311–14; *Manifestatio heresis catharorum*, in PL: 204, col. 792; see also Ilarino Da Milano, 'La "Manifestatio heresis catharorum quam fecit Bonacursus"', secondo il cod. Ott. lat. 136 della bibl. Vaticana', *Aevum*, 12 (1938), 281–333 (p. 312). See also *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 295.

<sup>162</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 296. Note that Vacarius also uses *perficio* elsewhere: 'Sic ergo solus Deus in altari oblationis perficit sacramentum per suum ministerium [...]', *Liber contra*, §19 [1], [e], p. 529.

<sup>163</sup> 'Idcirco, sicut supra dixi, *calix benedictionis* dicitur, ut a presbitero, qui vicem Domini obtinet, et non a quolibet rustico, sicut tu putas, sumatur et benedicatur': *Liber contra*, §20 [9], p. 541; cf. I Corinthians 10. 16.

<sup>164</sup> *Liber contra*, §11 [I], p. 503; §1 [III], p. 485 (cf. Ezekiel 16. 60–63); §2 [III], pp. 490–91 (cf. II Corinthians 6. 14).

<sup>165</sup> *Liber contra*, § 11 [II], p. 503.

is a friend of the impious.<sup>166</sup> There were undoubtedly many examples of unworthy priests, but this did not mean God formed a bond with them; Christ, for example, constituted that most impious Judas as a minister, but the Lord Himself did not enter a compact with him.<sup>167</sup>

To confuse spiritual with physical contamination, rebuts Vacarius, is to be ridiculous.<sup>168</sup> Speroni's admonition, borrowed from Paul, not to 'yoke' oneself 'with unbelievers' (implying that unworthy priests formed such a bond with God), was an incorrect understanding of the Apostle. Vacarius instead explains that Paul's exhortation is directed to the small number of recently-converted Corinthians to remove themselves from the large number of pagans, for fear of apostasy; thus, it is a question of avoiding spiritual, rather than physical, contact with unbelievers.<sup>169</sup> In any event, such a blanket condemnation of impure priests does not account for the worthy priests in holy orders: 'In the slaughterhouse each beast hangs on its own meagre foot', he notes, citing an unidentified saying which probably came from the local vernacular.<sup>170</sup> Vacarius continues that God does not form a partnership with a priest, even an unworthy one, just as a master did not form a partnership with his slave in Romano-Justinianic law; it was an incontestable legal argument that there could be no *societas* between a slave and his master, since a *dominus* held full legal capacity to own and contract, while a *servus* held no status or capacity to do so.<sup>171</sup> Vacarius uses this civil law analogy in order to correct Speroni, mindful of its appositeness for his erstwhile colleague who was 'skilled in the law and a master.'<sup>172</sup>

Related to the issue of a minister's unworthiness was the recipient's knowledge of this status, a topic of great interest to twelfth-century theologians. Gerhoch of Reichersberg barred unworthy priests from conferring the

<sup>166</sup> 'Numquid, quia impii cottidie Deo ministrant, dicendum est quod sit socius impiorum?': *Liber contra*, [F], p. 479.

<sup>167</sup> 'Dominus etiam Ihesus Christus impiissimum Iudam ministrum suum constituit, nec tamen cum eo societatem contraxit': *Liber contra*, §10 [1], p. 501; cf. *Liber contra*, §21 [III-3], p. 546, discussed above in connection with unworthy priests holding Holy Orders.

<sup>168</sup> *Liber contra*, §11 [2], p. 503.

<sup>169</sup> *Liber contra*, § 11 [III], p. 503; cf. II Corinthians 6. 14.

<sup>170</sup> 'In macello unumquodque pecus suo pede pendet': *Liber contra*, §11 [5], p. 505. Da Milano notes the similarity of Vacarius's 'salty proverb' to one from the Appulian region of Italy: *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 179.

<sup>171</sup> '[...] non potest esse Domini minister, respondeo quod nulla inter dominum et servum contrahitur societas': *Liber contra*, §11 [1], p. 503; [III-3], pp. 490-91; *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 160.

<sup>172</sup> 'cum iuris peritus sis et magister': *Liber contra*, §11 [1], p. 503.



sacraments, but mollified this view by adding that, if the faithful received them worthily and without knowledge of the unworthy state of the minister (even a schismatic priest), they received the effect of the sacrament.<sup>173</sup> But Honorius Augustodunensis denied that the Eucharist offered by an unworthy priest could be salvific, even if the recipients were unaware of the priest's crimes.<sup>174</sup> Vacarius himself deals with the issue cursorily. The conferring of the sacrament is unaffected by the personal attributes of the *indignus* or unworthy priest, or the subjective intentions of that minister, he states. Vacarius does, however, note that intention has some relevance in respect of the Eucharist, citing the phrase from I Corinthians 11. 29 that 'bad priests' eat and drink judgment to themselves.<sup>175</sup> But, in his final analysis, the validity of the sacrament is not affected. The recipient's subjective intent, too, is irrelevant, given that, on Speroni's analysis, it could mean that the absence of faith by a recipient places them in a better position than one holding to their faith.<sup>176</sup>

Kuttner and Rathbone cite two of Vacarius's arguments here as indicative of his ill-fitting use of civilian analogies. The first was his reference to the *dispensator* as indicative of God's authorization of unworthy priests, and the second to the slave-master relationship as reflecting the impossibility of a *societas* between God and a sinning priest. Further, they charged Vacarius with failing to deal with the issue of the sacramental power of unworthy priests as it was debated by Gratian and the decretists.<sup>177</sup> These criticisms go to the heart of my claim that Vacarius spanned the disciplines of canon law, Roman law, and theology. It is therefore necessary to discuss them in the context of twelfth-century legal and theological understandings of the issue. The starting point for

<sup>173</sup> 'Quae cum ita se habeant, liceat nobis dicere, quod, sicut Nicolao papa distinguente non omnes ordinati a symoniis ordinantur symoniace, ita non omnia sacramenta, quae celebrantur, fiunt in precisione': Gerhoch of Reichersberg, *Epistola ad Innocentium papam*, in PL: 194, cols 1375–1426; see also Gerhoch's *Liber de simoniis*, in PL: 194, cols 1335–72.

<sup>174</sup> '[...] imo communicando eis comitantur, cum iisdem etiam poenis participantur [...] Et ideo qui eis, quamvis in scilicet, communicant, tamen ab eis contaminantur': Honorius Augustodunensis, *Elucidarium*, I, I, cc. 188–89, in *L'Elucidarium et des lucidaires; Contribution par l'histoire d'un texte à l'histoire des croyances religieuses en France au moyen âge*, ed. by Yves Lefèvre (Paris: de Boccard, 1954), p. 397. He modified his statement later in the same work: 'Si uis uero eorum opera mala exsecrans et bonum Christi uenerans simpliciter ab eis communicat, et hunc credo hac fide saluari': c. 193, p. 398.

<sup>175</sup> 'Mali uero, non diiudicantes corpus et sanguinem Christi, iudicium sibi manducant et bibunt': *Liber contra*, §19 [1], [a], p. 524.

<sup>176</sup> *Liber contra*, §7 [1–1], p. 496; §7 [23], p. 496.

<sup>177</sup> Kuttner and Rathbone, 'Anglo-Norman Canonists', pp. 287–88, n. 22.

Gratian and the canonists was Augustine's trenchant criticism of the Donatists for their failure to distinguish sacramental power (*sacramentum*) from the right to exercise such power (*usus sacramenti*, or, more simply, *officium*).<sup>178</sup> For Augustine, when a cleric was deprived of his *officium*, he lost the authority to confer sacraments; but the conferment was nevertheless effective, and the *sacramentum* valid.<sup>179</sup> This was so, Augustine explained, since the true sacrament came, not from the unworthy minister, but from God.<sup>180</sup> Thus, a sacrament did not cease to be such simply because heretics and even the impious and iniquitous used them unlawfully; such men were to be punished, but their sacraments were to be acknowledged and venerated.<sup>181</sup>

Gratian's position on the issue was not straightforward. He accepted a similar distinction: sacramental power (not *sacramentum*, but now *officium*, or *potestas*, or *potestas officii*) was distinct from its lawful use and exercise (no longer *officium*, but now *executio officii* or *executio potestatis*).<sup>182</sup> In the dicta after d. 32, c. 6 Gratian notes the contrary views of Jerome and St Augustine concerning the proposition that 'Mass is not to be heard by a priest who has a concubine'. In this distinction Gratian was dealing with the issue from the viewpoint of simony and the different clerical orders. In the second part of the *Decretum* his focus was on the issue of reordination, whether in the case of reformed heretics or simoniacal priests (c. 1, q. 7), excommunicated priests (c. 9, q. 1), or lapsed priests (c. 24, q. 1).

His *dicta* suggested that the consecration performed by a sinning priest (*peccator catholicus*) was valid, but one by a heretical priest was invalid (C. 1, q. 1, dpc. 75, commenting on 'Jerome' — in fact, Alger of Liège, who died in 1190),<sup>183</sup> although a little later (c. 1, q. 1, dpc. 97) he admitted the validity of the

<sup>178</sup> Benson, *The Bishop Elect*, pp. 50ff.

<sup>179</sup> Augustine, *De baptismo*, 1.1.2, 6.1.1, in PL: 43, cols 109, 107; *Contra epistolam Parmeniani*, 2.28, in PL: 43, 70; *De bono coniugali*, 32, in PL: 40, 394. See Benson, *The Bishop Elect*, p. 50, n. 27.

<sup>180</sup> Augustine, *Contra litteras Petillani*, 2.69, in PL: 43, col. 281; Augustine, *Contra Cresconium*, 2.12, in PL: 43, col. 473. See Benson, *The Bishop Elect*, p. 50, n. 28.

<sup>181</sup> Maurice de La Taille, *The Mystery of Faith: Regarding the Most August Sacrament and Sacrifice of the Body and Blood of Christ*, trans. by J. Carroll and P. J. Dalton, 2 vols (London: Sheed & Ward, 1941), II, p. 237; Augustine, *Contra Donatistas*, 1, 3, c. 10, in PL: 43, col. 144.

<sup>182</sup> Benson, *The Bishop Elect*, pp. 50–51.

<sup>183</sup> C. 1, q. 1, c. 72 contains the rubric: 'From the hand of heretics communion is not to be received'.

consecration performed by heretical priests (using the words of Alger to explain Jerome in exactly this sense).<sup>184</sup>

Alger of Liège held that, if the minister was validly ordained and used the correct verbal formula, the sacraments 'of necessity', that is, baptism and the Mass, were efficacious and valid. But, for an unauthorized priest (that is, *suspensus vel depositus sacerdotus*), he was adamant that no power was left to them to perform the Mass (c. 1, q. 1, dpc 97). Thus, his dicta to c. 97 permits the heretic what was denied the unauthorized priest. Gratian's dicta therefore discouraged moral unworthiness, but did not go so far as to pronounce such actions as sacramentally invalid. In sum, he did not deal squarely with the issue of morally unworthy priests and the effect of their ministration of the sacrament. It is little wonder, then, that Vacarius did not make use of the *Decretum*.

Decretists after Gratian came to the consensus by the mid-twelfth century that, for the Eucharist to be validly consecrated, the minister had to be a priest validly ordained, no matter what his moral qualities. Such a position is presented in Roland of Bologna's *Sentences* (but, interestingly, not in his *Summa* on Gratian's *Decretum*).<sup>185</sup> But he stated that priests who had been interdicted, deposed, or unfrocked, or who are heretics, schismatics, or excommunicates did not have this capacity, since they were no longer in union with the Church. Rufinus, in his *Summa*, restated Alger's position that both good and bad (*malus*) ministers validly conferred the sacrament.<sup>186</sup> Rufinus based this position on the dignity of the office (*ex dignitate officii*).

Theologians such as Peter Lombard demonstrate similar confusion concerning the issue.<sup>187</sup> In the fourth book of his *Sentences*, he affirmed the conclusions of Gratian and Roland: the moral failings of a duly ordained priest were no impediment to him conferring the sacrament, but excommunicated and

<sup>184</sup> Alger of Liège, in his *De misericordia et iustitia*, premised the position that an unworthy priest could validly minister the Eucharist since their inward life did not effect the virtue of the sacrament itself: *Alger von Lüttichs Traktat*, ed. by Kretzschmar, pp. 31–37.

<sup>185</sup> Roland of Bologna, *Sententiae*, in *Die Sentenzen Rolands*, ed. by Ambrosius M. Gietl (Freiburg im Breisgau: Herder, 1891; repr. Amsterdam: Rodopi, 1969), pp. 216–18, 235–37.

<sup>186</sup> Rufinus, *Summa*, C. 1, q. 1, cc. 30–39, in *Die Summa decretorum des Magister Rufinus*, ed. by Heinrich Singer (Paderborn: Schöningh, 1902; repr. Aalen: Scientia, 1963), pp. 209–12.

<sup>187</sup> Colish, *Peter Lombard*, II, pp. 572–74, 579–80; Gary Macy, *The Theologies of the Eucharist in the Early Scholastic Period: A Study of the Salvific Function of the Sacrament according to the Theologians c.1080–1220* (Oxford: Clarendon Press, 1984), p. 55.

heretical priests did not validly confer the Mass.<sup>188</sup> But Peter later appeared to follow the teaching of Alger of Liège, and asserted that simoniacal priests had the authority to confer the sacraments of holy orders and the Eucharist.<sup>189</sup> La Taille concluded from this that, by simoniacal, Peter meant 'heretical', and that, therefore, it was the deprivation of a priest's authority to use the power (*exauctorationem*), rather than heresy, that inhibited sacrificial power. This juridical interpretation is at odds with Colish's emphasis on Peter's non-canonical rationale for his stance, namely that the efficacy of the sacrament lay in God's power, while the human minister played an essentially instrumental role, so that God would not allow his grace to be impeded by the unworthiness of his intermediaries.<sup>190</sup>

Vacarius's own handling of the matter avoids such difficulties and uncertainties, and justifiably ought to be critiqued on this basis. But, whether his comments indicate an absence of interest in canon law is another matter. He may well have felt that his presentation and rebuttal of Speroni's arguments was a sufficient solution to such thorny issues, whose full explication lay beyond his abilities or the range of authorities at his disposal. Highlighting the numerous conflicting authorities was of little service in convincing his erstwhile peer of the error of his ways. In addition, Vacarius's approach to the problem, whilst inexhaustive from a canonistic perspective, certainly deals with the theological issue current in twelfth-century thought as to the (Aristotelian) 'primary' cause of the sacrament. This understanding of contemporary scholastic thought, supported with pertinent illustrations from Roman law, and orthodox biblical exegesis together exemplify his cross-disciplinary approach to the problem.

Vacarius's near exhaustive treatment of 'unworthy' priests and holy orders is evidence of an overarching concern for the practical and everyday issues faced by lay believers and the lower clerical orders of the Church. Such pastoral concern is understandable against an expanding background of both heretical and reformist movements, in which each claimed biblical legitimacy for their respective forms of preaching and exegesis, communal living, and liturgical

<sup>188</sup> Peter Lombard, *Sententiae*, 4, d. 13, cc. 1–7, in *Sententiae in IV libris distinctae*, ed. by Brady, II, pp. 335–36. Robert Pullen agreed that morally unworthy priests could validly administer: *Sententiae*, 8.6; in PL: 186, cols 968A–D.

<sup>189</sup> Unless these priests are degraded from the priesthood: Peter Lombard, *Sententiae*, 4, d. 25, in *Sententiae in IV libris distinctae*, ed. by Brady, II, p. 350. Bandinus agreed that priests 'in union' with the Church conferred the sacrament, but not those excommunicated or in open heresy: *Summa Sententiarum in libri quatuor*, 4, d. 13, in PL: 192, col. 1097.

<sup>190</sup> La Taille, *The Mystery of Faith*, p. 240; cf. Colish, *Peter Lombard*, II, p. 580.

ceremony and ritual (or lack thereof). His use of civil law analogies, whilst extensive, was not at the expense of solid biblical exegesis and theological principles, borrowed, no doubt, from Augustine, but referable to other twelfth-century theologians as well. In addition, his use of Roman law was not merely by way of analogy, but also to draw on substantive jurisprudential principles of need and fairness.

### *Part III: Sacramental Matters: Baptism*

I have discussed above how Speroni linked the inefficacy of baptism to the unworthiness of the priests who purported to administer this sacrament, and Vacarius's rebuttal of this position. Consistent with his stance on interior justice and the notion that fixed predestination was the only means of bringing salvation and justification, Speroni regarded baptism, and the baptismal water in particular, as an empty ritual without salvific or other efficacy.<sup>191</sup> This argument complemented Speroni's similar position on confession and Mass.<sup>192</sup> Speroni instead advocated a 'spiritual' or 'interior' baptism.<sup>193</sup> But, as Vacarius responds, baptism is, in his eyes, a precept specified in the words and the example of Jesus, which is understood to involve 'corporeal water'.<sup>194</sup>

### **Baptism and its Basis in Original Sin**

Speroni's arguments challenge Vacarius to formulate his own understanding of the relationship between Original Sin and baptism. Speroni questioned the link between the two, first suggesting that baptism only purged Original Sin from the soul of the baptised, but not from their body.<sup>195</sup> Second, he classed Original Sin

<sup>191</sup> *Liber contra*, §31 [I], p. 565.

<sup>192</sup> Speroni believed that baptismal water was not useful or necessary for cleansing sin, just like oral confession (*Liber contra*, §31 [III], [III], pp. 566–67) and the Eucharist (*Liber contra*, § 31 [2], pp. 566–67).

<sup>193</sup> *Liber contra*, §18 [I], p. 520.

<sup>194</sup> 'Sed cogitare debes quod Dominus ipse in aqua baptizatus fuit et alios baptizari generaliter precepit, baptizandi legem constituendo, et ad eam confirmandam sui quoque exemplum dando [...] ita intellegi oportet de corporali aqua': *Liber contra*, §18 [I], pp. 520–21; cf. §31 [I], p. 566; cf. John 3. 5, Matthew 28. 19, Mark 16. 16.

<sup>195</sup> *Liber contra*, §15 [I], p. 516.

as a genetic sin, passed down through a child's parents.<sup>196</sup> Third, he stated that Original Sin was a 'fleshly' sin, which had its origins in the sin of concupiscence.<sup>197</sup>

Vacarius explains that baptism is, in fact, necessary for infants and adults to cleanse them of Original Sin.<sup>198</sup> Indeed, Vacarius's understanding of Original Sin is that it is the converse of original justice, a similar position to that held by Anselm. According to this understanding, the nature of Adam was pure and unblemished before the Fall, when he was in a condition of 'full liberty', or original justice, such that he was free to avoid sin. But when he and Eve ate of the apple, that liberty which was common to them was breached by them both, and so it was understood henceforth that this sin would be common to all.<sup>199</sup> Original Sin, therefore, according to Vacarius, is the broken pact made between God and Adam in paradise not to eat the apple, a pact which 'all men' broke in Adam when he ate the apple. To the first of these Speronian arguments, then, Vacarius responds that it is the whole person who is absolved from Original Sin in baptism, not just the soul. This was because humankind is a 'child of wrath' by virtue of its human nature, that is, both its soul and body composed together.<sup>200</sup>

Speroni's argument that Original Sin was genetic elicits a more detailed response from Vacarius. Vacarius states that Original Sin is no mere sin, such as fornication or greed. As explained above, it is a sin which is 'common to all', just as its converse, prelapsarian full liberty or original justice, had been 'common to all'. Original Sin therefore deprives all humankind of the gratuitous gift of grace, which had been common to all before the sin of Adam. For this reason, only the Original Sin of Adam and Eve, and none of their other sins, was transmitted to

<sup>196</sup> *Liber contra*, §16 [I], p. 518. See also Landau, 'Das Weihehindernis der Illegitimität', p. 45.

<sup>197</sup> Speroni interspersed Paul's phrase from II Corinthians 5. 21: 'He who knew sin, sinned for us', in this way: *Liber contra*, §17 [I–II], [II], p. 518.

<sup>198</sup> 'quia originale peccatum, quod in baptismo tollitur': *Liber contra*, Prologue, [D], p. 477.

<sup>199</sup> 'Attendamus ergo quod natura ipsius Ade purissima et mundissima in plena libertate condita fuit a Domino, ut liberum esset ei evitare omne peccatum. [...] quia sicut gratia Dei, que libertatem communiter omnibus dedit, communis omnium fuit, ita et peccatum, quod eam omnibus astulit, ab omnibus commissum intelligitur': *Liber contra*, §16 [I], p. 517.

<sup>200</sup> 'natura filius ire dicitur [...] Quoniam ire filius es natura et filius mortis': *Liber contra*, §15, p. 516; 'Tota enim humana natura, ex anima et corpore composita, per primum peccatum omnibus commune in omnibus integre corrupta fuit et maculata et servitute subiecta': *Liber contra*, §16 [I], p. 518.

posterity, since these other sins deprived no one of a good common to all.<sup>201</sup> Thus, Original Sin was not genetic in the sense that it was only passed down from father to son, but present in all human nature as a result of Adam's sin.

Further, in response to Speroni's claim that Original Sin was fleshly, as in concupiscence, Vacarius counters that Original Sin is not just a 'fleshly sin'. It is Vacarius's contention that Original Sin is a sin attributed to man's nature, not just his fleshly sins.<sup>202</sup> Vacarius emphasizes the unity of nature and operations in the 'composed human' such that, although the soul has its own faculty, it does not represent the 'whole man'.<sup>203</sup> Thus, Original Sin is in human nature, comprising both soul and body.<sup>204</sup> In interpreting the passage 'Through one man sin entered the world' (Romans 5. 12), the 'sin' referred to here is not 'concupiscence', states Vacarius.<sup>205</sup> Further, he explains that Paul's phrase in II Corinthians 5. 21, that Christ was 'sin for us', is to be interpreted figuratively, just as the expression 'the fields laugh' (*prata rident*); thus, Christ himself did not sin.<sup>206</sup> Therefore, all humankind, argues Vacarius, are understood to have sinned 'in' Adam, by virtue of his nature, not because of his concupiscence.<sup>207</sup> In this explanation, Vacarius takes a different line to Augustine, who did identify Original Sin with concupiscence. Vacarius's and the Anselmian notion of Original Sin as founded in human nature rather than concupiscence did not gain currency in scholastic thought until the thirteenth century, when the views of Thomas Aquinas finally superseded Augustine's. Vacarius, accordingly, did not have a particular influence on the scholastic sphere so much as a felicitous intuition in his independent way of thinking.<sup>208</sup>

In his tract, Vacarius also considered the controversial theological issue as to whether an infant who died without receiving baptism was irrevocably damned.

<sup>201</sup> 'Ipse vero Adam, cum Eva uxore sua [...] quia sicut gratia Dei, que libertatem communiter omnibus dedit, communis omnium fuit, ita et peccatum, quod eam omnibus astulit, ab omnibus comissum intelligitur': *Liber contra*, §16 [1], p. 517.

<sup>202</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 255.

<sup>203</sup> 'Putā, humana persona sive natura hominis ipsa operatur; anima vero et corpus magis dicuntur cooperari': §16 [1], p. 517.

<sup>204</sup> 'Tota enim humana natura, ex anima et corpore composita': *Liber contra*, §16 [1], p. 518.

<sup>205</sup> *Liber contra*, §17 [I–I], p. 518.

<sup>206</sup> *Liber contra*, §17 [2], p. 518.

<sup>207</sup> 'Ita in omnes homines mors pertransiit, in quo omnes peccaverunt': *Liber contra*, §17, p. 519; cf. §23 [III], p. 548. Vacarius prefers to read *in quo* here rather than the causal participle *eo quod*; such a reading was more consistent with the Church Fathers, than twelfth-century contemporary commentators: *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 259, n. 1.

<sup>208</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 262.

Speroni denied that baptism was effective for infants at all. First, he objected to the liturgy accompanying baptism, namely the priest's question: 'What do you seek?', and the godparent's response: 'I seek faith'. This verbal formula, he stated, was not true in a literal sense, since the godparents did not seek faith themselves, but rather for the infant.<sup>209</sup> In any event, Speroni argued, the infant did not have the mental capability to believe in God and therefore had no faith for the purposes of receiving baptism.<sup>210</sup> Speroni drew an analogy between the infant's purported consent to baptism with the consent, or mental element, required to acquire possession of property at Roman law; that is, he argued that no-one could acquire possession by physical means alone without demonstrating the requisite subjective intention to possess.<sup>211</sup> This a baby could not do.

Vacarius responds that the verbal formula is performative rather than narrative. When the godparent utters the words 'I seek faith', it was not for the purpose of announcing something, but for the purposes of effecting baptism.<sup>212</sup> In this same way, Vacarius added, the psalms or liturgical formulae did not narrate or announce a message of truth, but were truly effecting devotion for the Lord. Thus, just as the words of present intention in marriage vows perfected marriage then and there (according to his *Summa de matrimonio*), so the baptismal liturgy is a 'performative utterance' or 'speech-act' in effecting the child's covenant with and to the Christian faith.<sup>213</sup> In addition, the absence of faith at the time of the actual baptism by the infant has no impact on the valid conferring of the sacramental element, Vacarius argues; this is because of the doctrine of necessity. In this case, as in many others, necessity demands that proxies act for the infant, because of the baby's tender age. By way of example, he points to the 'ordination' of Samuel as a prophet, who consented to this

<sup>209</sup> *Liber contra*, §13 [I–I], pp. 510–11.

<sup>210</sup> *Liber contra*, §13 [II], p. 511.

<sup>211</sup> 'Possessionem quoque solo corpore sine animo nemo acquirere potest': *Liber contra*, §13 [III], p. 511. On the debate between Savigny and Ihering on the significance of the mental element in acquiring possession, see Borkowski, *Textbook on Roman Law*, p. 165; Thomas, *Textbook of Roman Law*, p. 140.

<sup>212</sup> 'Ita ergo et in baptismo verba non animo nunciandi aliquam rem, sed causa baptizandi infantem proferuntur. [...] Fidem peto, nec verum dicit, nec mentitur, sed quid agatur ostendit, id est ut negocium infantis in baptizando great, sicut ipse infans ageret': *Liber contra*, §12 [I–I], p. 511; *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 241.

<sup>213</sup> John Langshaw Austin, *How to Do things with Words: The William James Lectures Delivered at Harvard University in 1955*, ed. by J. O. Urmson and Marina Sbisa, 2nd edn (Oxford: Oxford University Press, 1990). Also note Vacarius's identification of the concepts of *perfectum* and *initiatum* in the *Summa de matrimonio*.



through his parents since he had no understanding as a child.<sup>214</sup> Further, Vacarius explains, an infant can physically possess a gift by 'bare possession', even without the requisite intent which normally accompanied full possessory rights (*animus possidendi*), through Justinian's *Code*, which recognized such gifts at the altar.<sup>215</sup> Vacarius's notion of agency is consistent with other twelfth-century theological approaches to the question of intentionality. For, although the Porretans believed that faith was necessary for baptism, they conceded that, in the case of infants, the faith of their elders met this condition.<sup>216</sup>

Kuttner and Rathbone have observed with dismay Vacarius's use here of civilian notions of possession to justify the legitimacy of infant baptism. It is, in fact, Speroni's use of the analogy which moves Vacarius to use it in his reply. But Vacarius does not confine himself to the legal authority of the *Code* or to Roman law analogies of agency, necessity, or possession. Vacarius also argues that exegesis supports the legal concept of necessity: in the case of the paralysed man in Luke's parable, for example, who was admitted into the temple via the roof, necessity sometimes demanded that the faith of others assisted those who were not capable of expressing their faith. Thus, in the case of baptism, since necessity demanded that the danger of eternal hell be averted as well as that of Original Sin, so in the case of an infant another person of legal age could assist them to avert such consequences by admitting them to baptism.<sup>217</sup> Vacarius continues by discussing the Augustinian rationale behind the need for infant baptism, namely the danger of failing to cleanse the infant of sin and their subsequent eternal damnation.

Vacarius defends the Augustinian position on the necessity of infant baptism, with this imagined conversation:

<sup>214</sup> 'Samuel tamen propheta per suos parentes Domino iure addictus fuit infantulus, nullum habens intellectum': *Liber contra*, §13 [2], p. 511; cf. 1 Kings 1. 21–28. He also points to the parable of Luke 5. 18–20 whereby the paralysed man was admitted through the roof of the temple with the assistance of the faith of others: *Liber contra*, §13 [3], p. 512.

<sup>215</sup> 'ut puta si is, qui suscepit eum de sacro fonte, donavit ei aliquam pecuniam, simul et tradidit, secundum quod scriptum est': *Liber contra* §13 [3], p. 512, n. 1. The right of 'bare possession' (*vacua possessio*) was not an absolute right of ownership, but was sufficient to prevent other parties acquiring rights in the gift: *Code*, 7.32.3, p. 307.

<sup>216</sup> Further, they argued, taking an argument from Augustine on predestination and turning it against him, the decree of predestination would not change and God would save his elect whether baptised or not: Colish, *Peter Lombard*, II, p. 536, n. 167.

<sup>217</sup> 'Ex his omnibus intellegere potes quod, ubi necessitas exigit, per alium etati succurritur. [...] sicut Lucas in Evangelio scribens': *Liber contra*, §13 [3], p. 512; cf. Luke 5. 18–20. The precept of necessity also applied to circumcision, for which see further below.

For if, as you [Speroni] say, the aborted baby (*abortivus*) asks 'Why do you condemn me? What evil have I done? Or what did I omit to do that I ought or could have done?', the Lord would respond: 'Because you are a child *of wrath* and *by nature* a son of death; on that basis, I condemn you; for you are impure and on that account cannot be with me. And this is not my fault, but yours, since you have *broken my covenant* with Adam [Genesis 17. 14].'<sup>218</sup>

Although appropriating a scriptural precept that refers to circumcision rather than to baptism directly, Vacarius presents the Augustinian view that a newborn baby is guilty of Original Sin since it is born under the law of death and in a state of impurity and sinfulness; this was due to all humankind's complicity in the sin of Adam. Unbaptised infants were to be condemned for their guilt in the sin of the flesh, although they would die in the 'sight of God' and their sufferings would be lessened.<sup>219</sup> But whereas St Augustine's traditional doctrine of concupiscence was the *locus* for Original Sin, Vacarius situates the sin of Adam and Eve in human nature instead, that is '*by nature* a son of death'. Canonists, like Ivo of Chartres and Gratian, and Master Roland after him, as well as theologians such as Honorius Augustodienensis, the author of the *Sententiae divinitatis*, and Peter Lombard stuck to the 'obduracy' of this Augustinian view.<sup>220</sup> Vacarius no doubt would have been aware of the attempts by several twelfth-century scholastics to soften Augustine's stance.<sup>221</sup> Anselm of Laon reasoned that unbaptised infants were an exception to Augustine's 'hard line';

<sup>218</sup> 'Nam si, ut ais, abortivus a Domino querat: Cur me condempnas? quid mali feci, vel quid quid omisi quod facere debui vel potui? Respondebit Dominus: Quoniam *ire* filius es *natura* et filius mortis; idcirco te condempno; immundus enim es et ideo mecum esse non potes. Et hoc non est ex mea culpa, sed ex tua, quia in Adam *pactum meum irritum* fecisti': *Liber contra*, §15 [III–3], p. 516.

<sup>219</sup> 'quia in Adam omnes peccaverunt et omnes pactum illud cum Adam factum irritum fecerunt, secundum Dominicam rationem': *Liber contra*, §17 [1], p. 520.

<sup>220</sup> Ivo of Chartres, *Decretum*, I, c. 35, in PL: 161, col. 75D; Gratian, *Decretum*, D. 4, 'de cons.' c. 30; cc. 3–7, c. 129, cc. 132–46, cols 1370, 1362–63, 1402–03, 1405–09; Roland of Bologna, *Sententiae*, in *Die Sentenzen Rolands*, ed. by Gietl, p. 209; Honorius, *Elucidarium*, 2.42–45, in *L'Elucidarium et des lucidaires*, ed. by Lefèvre, pp. 423–24; *Sententiae divinitatis*, 5.1, in *Die Sententiae Divinitatis: Ein Sentenzenbuch der Gilbertischen Schule*, ed. by Bernhard Geyer, Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters, 7, Heft 2–3 (Münster: Aschendorff, 1909), pp. 115–17, 122–24; and Peter Lombard, *Sententiae*, 4, d. 4, c. 4, c. 12, in *Sententiae in IV libris distinctae*, ed. by Brady, II, p. 259. See also Colish, *Peter Lombard*, II, p. 537.

<sup>221</sup> For what follows, see *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 250; Colish, *Peter Lombard*, II, pp. 533–39.

they were not to be punished, but their parents were, due to their negligence.<sup>222</sup> Abelard similarly privileged intentionality, and therefore opposed the consensus view.<sup>223</sup> Vacarius's notion that baptism removes Original Sin represents the consensus view among twelfth-century theologians, although, amid this consensus, doubt existed over the continuing effects of Original Sin, an issue which Vacarius does not consider.<sup>224</sup>

### Baptism and Circumcision

Consistent with his rejection of the sacrament of baptism, Speroni dismissed the ritual of circumcision. He suggested that circumcision did not 'justify', in the sense of cleansing sin, Original or otherwise, but instead brought death, if it was understood literally.<sup>225</sup> Speroni introduces guilt (*culpa*), according to Vacarius: like a law or a will, the person who disobeys it or fails to fulfil a condition (of a will) is at fault. It seems to be Speroni's argument that, whereas previously there was no guilt, now there is.<sup>226</sup> Implicitly, then, the 'guilt' is with the heir who fails to fulfil the condition. This Roman law reference was Speroni's attempt to demonstrate that the persons who follow the precept of circumcision are at fault, not God. Vacarius denies the fittingness of this Roman law analogy and the logic

<sup>222</sup> Anselm of Laon, *Sententiae divinae paginae*, in *Anselms von Laon systematische Sentenzen*, ed. by Franz B. Bliemetzrieder (Münster: Aschendorff, 1919), pp. 42–46; *Sentences*, in *Psychologie et morale aux XIIe et XIIIe siècles*, ed. by Odon Lottin, 6 vols (Louvain: Abbaye de Mont-César, 1948–59), V, nos 53–54, 57–59.

<sup>223</sup> Peter Abelard, *In Epistolam Pauli ad Romanos*, 5.9, in *Opera theologica*, ed. by Eligius M. Buytaert, Corpus Christianorum, Continuatio Medievalis, II (Turnhout: Brepols, 1969), pp. 164, 166, 170–72.

<sup>224</sup> For example, the school of Laon held that baptism destroyed Original Sin, although the effects of Original Sin (mortality, concupiscence and the inclination to sin) remained. The Porretans agreed, adding that baptism also removed the eternal punishment due for Original Sin. Hugh of St Victor agreed with the school of Laon and the Porretans that the guilt and eternal punishment, respectively, were removed by baptism, and that the suffering imposed by sins remained: Colish, *Peter Lombard*, II, p. 540. For Peter Lombard, all who received baptism were free from Original Sin, although only the elect were saved as well. Further, in the case of infants, baptism not only cleansed them from Original Sin, but granted them grace to later achieve sanctification: Colish, *Peter Lombard*, II, p. 539, n. 173.

<sup>225</sup> *Liber contra*, §23 [I], p. 547; cf. II Corinthians 3. 6.

<sup>226</sup> *Liber contra*, §23 [I], p. 547; cf. *Digest*, 28.7, pp. 393–95?; *Institutes*, 2.14, p. 20. See *L'Eresia di Ugo Speroni*, ed. by Da Milano, pp. 233 and 266; and Thomas, *Textbook of Roman Law*, p. 490.

of Speroni's argument. He responds that it is not 'guilt' which is attributable to the heir, but merely the non-fulfilment of a condition of the will. If they did fulfil the condition according to the 'letter' of the law, no guilt or harm would flow to them. In this way, argues Vacarius, the 'letter' of the law does no harm and places no guilt. Likewise, he continues, the 'law' of circumcision does not kill or harm. Rather, it justifies to the extent that it purges Original Sin.<sup>227</sup>

Just as he does with baptism, Vacarius explains the necessity for circumcision as a means of cleansing Original Sin. Contrary to Speroni, circumcision, in the eyes of Vacarius, brings justification; circumcision, like baptism, is necessary to purge humankind of the sin in their human nature deriving from Adam. He applies the same words from Genesis 17. 14, dealing with the uncircumcised ('that person shall be cut off from his people; he has broken my covenant'), as an admonition to the unbaptised.<sup>228</sup>

Vacarius's identification of the scriptural rationale for baptism and circumcision is at odds with many twelfth-century theologians, in whose eyes circumcision was an Old Testament precursor to the New Law of baptism. Peter Lombard, in particular, rejected the view that circumcision was efficacious against either Original or actual sin.<sup>229</sup> But many of the Patristic Fathers, and some contemporary ecclesiastical writers of the time, agreed with Vacarius's view of the need for a dual role for both baptism and circumcision in freeing the descendants of Adam from Original Sin.<sup>230</sup> In particular, Hugh of St Victor and Roland of Bologna, following Augustine and Bede before them, placed baptism

<sup>227</sup> 'Ergo nec littera ipsa legis ei nocere posset, si conditionis impleret. [...] Littera ergo circumcisionis non occidit, neque nocet. Sed magis est ut iustificaret, eatenus tamen ut originale peccatum evacuet': *Liber contra*, §23 [1], p. 547.

<sup>228</sup> 'Sicut ergo ex causa necessaria fuit quondam carnis circumcisio, ita et nunc aque ablutio, ne de populo suo anima pueri tollatur': *Liber contra*, [D], p. 477; 'Similiter et ille qui infantem baptizat *vel circumcidit* ex causa fidei, fidelem et de populo Domini eum esse facit, ut non pereat de populo suo, quia eius recte negotium gerit': *Liber contra*, §13 [3], p. 512 [my emphasis]. Elsewhere in this text Vacarius posits the same Scriptural text warning against both the uncircumcised and the unbaptised: §15 [III–3], p. 516; §18 [1], p. 520; §23 [1], pp. 547–48.

<sup>229</sup> Peter Lombard, *Sententiae*, 4, d. 1, c. 5, 1–6, in *Sententiae in IV libris distinctae*, ed. by Brady, II, pp. 234–35; see also Colish, *Peter Lombard*, I, pp. 530–31.

<sup>230</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 260. These theologians included Ambrose, Augustine, Gregory the Great, Isidore of Seville and, St Bede, and, in the twelfth century, Hugh of St Victor, St Bernard, Peter Lombard, and Rupert of Deutz (d. 1135).

on the same 'sacramental trajectory' as circumcision in terms of their efficacy in remitting sin.<sup>231</sup>

Arguably, however, Vacarius maintains the primacy of baptism over circumcision. He explains that the two are quite different. Baptism is a general command (*constitutio generalis*) established by the words of Jesus Christ himself in Scripture, by his own example of being baptised in the waters of the Jordan River, and by his command that all Christians do the same. In contrast, circumcision is and was a mere agreement (*pactio*) by the male heirs of the Hebrews to circumcise infants eight days old.<sup>232</sup> Thus, circumcision was predicated on the agreement between God and a select few, namely male Jews, while baptism was an edict obligatory for all Christians. In this way baptism had universal application, but circumcision did not. Further indicia of Vacarius's subtle distinction between baptism and circumcision occurs in his reference to Speroni's analogy of an heir's right to take under a will.<sup>233</sup> As I have shown, Vacarius explains that the heir's right to inherit under the will is a voluntarily act, and without penalty. Thus, the heir could choose to inherit, or not. In this way, Vacarius implies that circumcision is not of the same order of necessity as baptism.

In his treatment of baptism, Vacarius taps into the issue concerning the need for infants to be baptised, as well as the analogous role of circumcision under the Old Law, both contentious issues in scholastic circles. Despite his use of Roman law similes to illustrate these arguments, a feature sometimes imposed on him by Speroni, his prime focus is on the theologically significant role of Original Sin, and the means for cleansing it.

<sup>231</sup> Hugh of St Victor, *De sacramentis Christianae fidei*, 2.6.4, in PL: 176, col. 449D; *Sententiae*, I.5.1.13, in 'Die "Sententiae magistri Gisliberti Pictaviensis episcopi": I', ed. by Nikolaus M. Häring, *Archives d'histoire doctrinale et littéraire du moyen âge*, 45 (1978), 83–180 (pp. 144–46); *Sententiae divinitatis*, 5.1, in *Die Sententiae Divinitatis*, ed. by Geyer, pp. 110–11; Roland of Bologna, *Sententiae*, in *Die Sentenzen Rolands*, ed. by Gietl, pp. 194–96. Hugh regarded the rite of circumcision as salvific, although females could be saved without it, through works and faith. Inconsistently, however, he added that these rites signified grace only; they did not impart saving grace. Hugh of St Victor, *De sacramentis Christianae fidei*, 1.12.1–2, 1.12.5–10, in PL: 176, cols 347D–351B, 352Q–364A.

<sup>232</sup> *Liber contra*, §18 [1], p. 520; §31 [1], p. 566. The *pactum* was recognized in the *Digest*, 2.14.1.1–2, p. 27; cf. *Digest*, 50.12.3, p. 854, as was the *constitutio principis*, *Digest*, 1.4.1.1, p. 7; cf. *Institutes*, 1.2.6, pp. 1–2. See *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 263.

<sup>233</sup> *Liber contra*, §23 [1], p. 547.

### *Part IV: Sacramental Matters: Eucharist*

The Eucharist forms a crucial component of Vacarius's treatise against Speroni, since the heresiarch rejected this sacrament in almost every theological aspect. Interest in the Eucharist developed in the twelfth century to an almost unprecedented extent. Theologically, it was recognized as the 'sacrament of sacraments', in which grace was not only given, but so too was 'the giver of graces'.<sup>234</sup> A surge of devotion in popular piety in respect of the Eucharistic also occurred during this time.<sup>235</sup> Vacarius's polemic against Speroni reflects such issues as would have affected lay members of the Church, with Vacarius taking a pastoral approach to allaying them, as well as addressing the more complex theological issues discussed by twelfth-century theologians and canonists of his era. But Vacarius's confrontation with Speroni's heterodox views on the Mass reveal the limits of his capacity for patient instruction in the face of unremitting polemic, as well as the limits of his didactic hermeneutic employing Romano-Justinianic law.

### **Corporeal Understanding of the Eucharist**

Speroni denied the real presence in the Eucharist, instead expressing a corporeal and ironic interpretation of the orthodox understanding of this sacrament. If the orthodox Catholic notion of the real presence in the Eucharist were correct, Speroni argued, then the logical consequence was that Christ was gnawed by teeth, bitten, suffered, and died when offered on the altar during the Eucharist.<sup>236</sup> Christ did not 'die' mystically (*mistice*), Speroni continued, but was eaten, bitten, and suffered 'naturally' (*naturaliter*) in the Mass.<sup>237</sup> Vacarius recognizes the heavy irony behind Speroni's *reductio ad absurdum*, describing his comments as

<sup>234</sup> *Sententiae divinitatis*, 5. 3, in *Die Sententiae Divinitatis*, ed. by Geyer, p. 128; *Summa sententiarum*, 6. 2, in PL: 176, col. 139B: 'In hoc enim sacramento non solum gratia, sed ille a quo est omnis gratia sumitur'.

<sup>235</sup> Colish, *Peter Lombard*, II, p. 551.

<sup>236</sup> *Liber contra*, Prologue, [D], p. 477. Further examples include: '[...] quod Christus in altari immolatur, frangitur, teritur, occidetur': *Liber contra*, §20 [12], p. 543; 'Putas enim quod si caro Christi ore manducatur, quod dentibus rodatur, teratur et laceratur; quod si verum esset Christus integer non remaneret': *Liber contra*, §31 [V–5], p. 571.

<sup>237</sup> §19 *Liber contra*, [I], [b], p. 524. He noted the absence of any scriptural reference to Christ dying *mistice*: *Liber contra*, §19 [I], [c], p. 522. Note that Speroni inconsistently referred to Christ dying *mistice* in an earlier passage: Prologue, [E], p. 477.

‘sophistic, idle and varying’.<sup>238</sup> This corporeal representation of the Eucharist mirrored the ‘ultra-realist’ position put forward at the Synod of Tours in 1054, and the arguments of Berengar of Tours in that controversy.<sup>239</sup>

Christ, Vacarius responds, died only once, on the cross, and did not suffer or die in the Eucharist, even though it was his real body and blood which was eaten, because ‘death had no dominion over him’.<sup>240</sup> He was ‘eaten’ in an ‘inestimable mystical manner’.<sup>241</sup> Because Paul asked: ‘Is it not the communion of the blood of Christ?’, this query permits no doubt as to the reality of the presence of Christ’s body and blood.<sup>242</sup> Further, the words ‘This is my body’ (*Hoc est corpus meum*) were to be interpreted literally, not figuratively.<sup>243</sup> But, Vacarius states, neither the body nor blood of Christ is received or communicated in the Eucharist in its physical form, that is, in a corporeal nature or species perceptible to the senses, but instead ‘in a certain spiritual sacrament’ (*in spirituali quodam sacramento*).<sup>244</sup> Vacarius states that, during Mass, the body of Christ is not eaten in the carnal and corporeal manner which Speroni envisaged,<sup>245</sup> but in a special and singular way which defied rational explanation.<sup>246</sup>

Vacarius distinguishes this notion of the spiritual or mystical Eucharistic eating of the body and blood of Christ from the ‘figurative’ kind of eating

<sup>238</sup> ‘Cui veritate obviare vanis et variis objectionibus sophisticè laborasti’: *Liber contra*, §31 [V–5], p. 570.

<sup>239</sup> Macy observes that Berengar made this argument sarcastically, since he himself believed that Christ’s body remained in Heaven and was not actually present in the Eucharist: Gary Macy, ‘Berengar’s Legacy as Heresiarch’, in *Auctoritas und Ratio: Studien zu Berengar von Tours*, ed. by R. B. C. Huygens, Friedrich Niewöhner, and Peter Ganz (Wiesbaden: Horowitz, 1990), pp. 47–67 (p. 64, n. 33). It is possible that Speroni’s argument was also intended ironically, although we have insufficient information about his beliefs in relation to the Mass to support this.

<sup>240</sup> *Liber contra*, Prologue, [E], p. 477; cf. Romans 6. 9.

<sup>241</sup> ‘Sic nec in altari moritur, nec dentibus laceratur seu teritur, quia non carnaliter, sed inestimabili modo spiritualiter manducatur’: *Liber contra*, §19 [1], [b], p. 524.

<sup>242</sup> *Liber contra*, §20 [3], p. 534; cf. 1 Corinthians 10. 16–17.

<sup>243</sup> *Liber contra*, §20 [5], p. 538; cf. 1 Corinthians 11. 24.

<sup>244</sup> ‘nec caro Christi nec eius sanguis in ea corporali natura vel specie, in qua ab hominibus videri poterant, recipiuntur et communicantur; sed in spirituali quodam sacramento’: *Liber contra*, §19 [1], [d], pp. 527–28.

<sup>245</sup> ‘in carnali specie’: *Liber contra*, §31 [5], p. 571; ‘non in carnali proprietate nec in sua natura visibili’: *Liber contra*, §32, p. 575.

<sup>246</sup> ‘Specialis est enim illa ratio et modus comedendi et singularis, non naturalis’: *Liber contra*, Prologue, [E], p. 478.

associated with Jewish attempts to understand the Eucharist.<sup>247</sup> Jewish thinkers queried how the flesh of Christ could be eaten, other than figuratively.<sup>248</sup> Vacarius, moreover, specifically denies that the body and blood of Christ are eaten in their physical and visible form (*corporalem speciem*); this, however, does not exclude the 'universal property of his body' being received and communicated in the Eucharist.<sup>249</sup> By this he means that Christ, although eaten spiritually, was present in substance, not merely as an accident; accordingly, the accidents of Christ were eaten, but not his substance.<sup>250</sup> In this way, Vacarius gestures towards the Aristotelian distinction between 'accident' and 'substance' to explain how the saving presence of the Lord can be an underlying substance or entity, despite the apparent consumption of the Eucharistic host as exaggerated by Speroni.

In this way, like other twelfth-century writers, Vacarius attempts to explain the difference between the accidents of the bread and wine, and the substance of the body and blood of Christ, as a means of rebutting Speroni's exaggeratedly material interpretation of the Eucharist. According to the *Summa sententiarum*, Christ remained whole in himself; and was neither divided nor parted, despite his external appearance (*speciem*), by which one's sense were ostensibly instructed. This teaching appeared in the writings of several other twelfth-century theologians, most notably those of Hugh of St Victor.<sup>251</sup> In the *Sententiae*

<sup>247</sup> Speroni held that the body and blood of Christ could be eaten only 'in the heart' (*corde*), that is, figuratively (*figura tantum*) or 'by love' (*amore*): *Liber contra*, §20 [IV–4], pp. 535–36; §20 [VII], [7], p. 539; §20 [VIII], [8], pp. 539–40. For Speroni, to 'eat' Christ in the Eucharist or the 'Lordly meal' meant to imitate him in love: 'Tu vero, econtra, quod nec caro Christi nec eius sanguis ore participetur vel comunicetur, ex eo probare niteris quod sufficit sola dilectio Dei ut Verbum Dei manducetur, ita et in carne Christi': *Liber contra*, §20 [VIII], p. 539. This spiritualist notion of the Eucharist accorded closely with that of Berengar of Tours and conveyed the 'mystical' sentiment of Peter Lombard: Macy, *The Theologies of the Eucharist*, p. 59, n. 129 (note that Macy gives the wrong page reference in the *Liber contra*). Vacarius assures Speroni that it is, in fact, the real blood and body of Christ which is eaten 'in the mouth' (*in ore*): *Liber contra*, §20 [7], [8], p. 539. Further, he equates Speroni's eating *in corde* with the errors of Jews: *Liber contra*, §20 [4], p. 537.

<sup>248</sup> 'Maxime cum miseri Iudei quærerunt *quomodo* posset *carnem suam dare ad manducandum?*': *Liber contra*, §20 [IV–4], p. 537.

<sup>249</sup> '[...] ut corporalem illam speciem demonstraret, et non ut universam, sui corporis proprietatem escluderet': *Liber contra*, §19 [1], [d], pp. 527–28.

<sup>250</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 306.

<sup>251</sup> Hugh of St Victor, *Summa sententiarum Christianae fidei*, 6, c. 8, in PL: 176, cols 144C–145B. See also Gary Macy, 'The Theological Fate of Berengar's Oath of 1059: Interpreting a



of Peter Lombard, the Parisian master similarly confirmed that the parts of the host which appeared to be broken or suffered, occurred only 'in sign' (*in sacramento* or *in sacramentum tantum*), that is, in the visible species.<sup>252</sup> Alain of Lille explained that it was the *forma panis* (the outward form of the bread) that was masticated in communion, not the glorified body of Christ, which could not be broken or divided.<sup>253</sup>

Other authors argued, in contrast, that the destruction or eating of the host was only an illusion. Gilbert of Poitiers stated that the host only appeared to be broken, just as a stick placed in water appeared to bend, although the mind recognized that this was not the case.<sup>254</sup> Another work associated with the Porretans, the anonymous *Summa sacramentis "Totus homo"*, made the same argument.<sup>255</sup> In addition, a number of works associated with Abelard argued that the breaking of the bread was an illusion and that this illusion was for the purposes of edification.<sup>256</sup> Thus, a consensus of opinion deemed that Christ was not broken and remained impassible in the sacrament.<sup>257</sup>

Speroni denied the real presence in a second stereotypical heresy, called 'stercoranism'. Speroni argued that the body and blood of Jesus Christ, present in the Eucharist, were subject to detriment and suffered infamy by being

Blunder Become Tradition', in *Interpreting Tradition: The Art of Theological Reflection*, ed. by Jane Kopas (Chico, CA: Scholars Press, 1984), pp. 27–38 (p. 33, n. 30).

<sup>252</sup> 'Ex his satis datur intellegi [...] sed in sacramento tantum': Peter Lombard, *Sententiae*, 4, d. 12, c. 2, in *Sententiae in IV libris distinctae*, ed. by Brady, II, pp. 304–05.

<sup>253</sup> Alain of Lille, *De fide catholica*, in PL: 210, cols 305–430, 362C.

<sup>254</sup> *Sententiae*, in 'Die "Sententiae magistri Gisliberti Pictaviensis episcopi": II', ed. by Nikolaus M. Häring, *Archives d'histoire doctrinale et littéraire du moyen âge*, 46 (1979), 45–105 (p. 64). For a discussion of other masters who followed Gilbert in this teaching, see 'Die "Sententiae magistri Gisliberti Pictavensis episcopi": I', ed. by Häring, p. 91.

<sup>255</sup> *Summa de sacramentis "Totus homo"*, ed. by Umberto Betti, *Spicilegium Pontificii Athenaei Antoniani*, 7 (Rome: Pontificium Athenaeum Antonianum, 1955), c. 19, pp. 51–53.

<sup>256</sup> *Sententiae Florianenses*, ed. by H. Ostlender, *Florilegium patristicum*, 19 (Bonn: P. Hanstein, 1929), cc. 69–71, p. 31; *Sententiae Parisiensis priores*, in *Écrits théologiques de l'école de l'Abélard*, ed. by Artur Michael Landgraf, *Études et documents*, 14 (Louvain: Univ. Catholique de Louvain, 1934), p. 42; and *Sententiae magistri Petri Abaelardi*, in PL: 178, cols 1741C–43A; see also *Sententiae magistri Petri Abaelardi*, ed. by Sandro Buzzetti, *Pubblicazioni della Facoltà di lettere e filosofia dell'Università di Milano*, 101, Sezione a cura di storia di filosofia, 31 (Florence: Nuova Italia, 1983), pp. 203–05.

<sup>257</sup> Note the opposition of Walter of St Victor and an unidentified Abbot Abbadus: Macy, 'The Theological Fate', p. 33, nn. 33–34.

ingested, digested, and then voided by the recipient.<sup>258</sup> Taken from the word *stercus* ('filth'), such teaching was linked to Berengar of Tours.<sup>259</sup> Berengar based this teaching on a literal reading of Matthew 15. 17: 'Do you not yet understand that whatever enters the mouth goes into the stomach and is eliminated?'<sup>260</sup> For Berengar, the presence of the body of Christ on earth would involve the faithful indulging in a kind of cannibalism, or worse, subject the presence to the indignity of digestion, or desecration by animals.<sup>261</sup> The stercoranist argument had its most widespread and influential use in the hands of Cathar preachers and the followers of Amalric of Bène and the Amalricians;<sup>262</sup> Alain of Lille, in his *Contra haereticos* (1185–1200), dealt with the stercoranist argument as used by the Cathars.<sup>263</sup> By pointing to such examples of the indecorous treatment of the host, such as the host being eaten and defecated, or being eaten by a mouse,<sup>264</sup> Speroni

<sup>258</sup> 'Christus totus est in pisside, totus extra pissidem, toutus est in stomacho, totus in celo?': *Liber contra*, §19 [I], [d], p. 523.

<sup>259</sup> The link is misleading, according to Macy, 'Berengar's Legacy', p. 64.

<sup>260</sup> *Ibid.*, p. 64, n. 33.

<sup>261</sup> Berengar of Tours, *De sacra coena adversus Lanfrancum*, ed. by W. H. Beekenkamp, 12 vols (The Hague: Nijhoff, 1941), 1; see more recently *Beringerius Turonensis Rescriptum contra Lanfrannum*, ed. by R. B. C. Huygens, *Corpus Christianorum*, *Continuatio Medievals*, 84–84a (Turnhout: Brepols, 1988).

<sup>262</sup> Robert I. Moore, *The Formation of a Persecuting Society: Power and Deviance in Western Europe, 950–1250* (Oxford: Blackwell, 1987), pp. 234–37; Macy, 'Berengar's Legacy', p. 66. See *Contra amaurianos*, 'Sed adhuc forte dicis: si corpus Christi ubique non est, sed locale, ubi est corpus Christi, vel quid factum est de corpore Christi, postquam sumpsi illud et manducavi?': in *Contra Amaurianos: ein anonymes, wahrscheinlich dem Garnerius von Rochefort zugehöriger Traktat gegen die Amalrikaner aus dem Anfang des XIII. Jahrhunderts*, ed. by Clemens Baeumker, *Beiträge zur Geschichte der Philosophie des Mittelalters, Texte und Untersuchungen*, 24 (Münster: Aschendorff, 1926), p. 45; Heinrich Fichtenau, *Ketzer und Professoren: Häresie und Vernunftglaube im Hochmittelalter* (Munich: Beck, 1993), repr. as *Heretics and Scholars in the High Middle Ages*, trans. by Denise A. Kaiser (Philadelphia: Pennsylvania University Press, 1998), p. 306.

<sup>263</sup> He dealt with the issue when answering the 'heretics', and so did not repeat his responses when answering the Jews: see Alain of Lille, *De fide catholica*, in PL: 210, col. 362C; cf. 'Quod autem Christus ait: *Omne, quod in os intrat*, etc., intelligendum est de cibo materiali, non spirituali; sicut enim materialis cibus vadit in secessum ita spiritualis in mentis excessum': Alain of Lille, *De fide catholica*, in PL: 210, col. 363. See also Gillian Rosemary Evans, *Alan of Lille. The Frontiers of Theology in the Later Twelfth Century* (Cambridge: Cambridge University Press, 1983), p. 126.

<sup>264</sup> The issue of the consequences of a mouse eating the host is not dealt with by Vacarius; perhaps, like Peter Lombard and Alain of Lille, Vacarius dismissed this question as frivolous: Peter Lombard, *Sententiae*, 4, d. 13, c. 1, c. 8, in *Sententiae in IV libris distinctae*, ed. by Brady,

and other twelfth-century dissenters hoped to demonstrate the absurdity of the belief that Christ could be truly present in the Eucharist.<sup>265</sup>

Vacarius notes similar arguments used by the 'Jews of Northampton'.<sup>266</sup> Jews, states Vacarius, use stercoranist arguments to deny that Christ was the Lord because he had been enclosed in the genitalia of Mary and voided from her womb.<sup>267</sup> Guareschi has surmised that this reference to the Northampton Jews indicates that Vacarius had intervened at Northampton as a sort of champion to determine a dispute in everyday Christian-Jewish relations.<sup>268</sup> Indeed, contemporary evidence for such debates between Jews and Christians in the 1190s exists in a gloss attributable to John of Tynemouth, a teacher in 'both laws' at Oxford.<sup>269</sup> Prompted presumably by his fellow clerics who were in difficulty, Vacarius took on what may have been a very 'public' and 'popular' defence of Christian orthodoxy.<sup>270</sup> As we can see, Vacarius's arguments resemble Alain of Lille's *Contra haereticos*, in which Alain responded to Jewish arguments literally comparing the Eucharist to the sacrifices in Levitical law.<sup>271</sup>

Vacarius responds to the stercoranist arguments through a use of analogy.<sup>272</sup> The soul, he states, gives life to the whole body, whether it comes into contact with more dirt in its lower or less noble parts (*fundamentum*) than its noble parts, such as the head. For example, the sun's light shines equally on filthy sewers or perfumed places. God is whole (*totus*), everywhere, even in the impure places. Just because God has contact with earthly filth does not mean that God

11, pp. 335–36; Gary Macy, 'Of Mice and Manna: *Quid mus sumit* as a Pastoral Question', *Recherche de théologie ancienne et médiévale*, 58 (1991), 157–66 (p. 160); and Alain of Lille, *De fide catholica*, in PL: 210, cols 306–430.

<sup>265</sup> The chronology of the uses of stercoranism in the eleventh and twelfth centuries is traced by Macy ['Berengar's Legacy', pp. 64–66] and *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 277.

<sup>266</sup> '[...] sicut Iudei apud Norhamtuniam [sic], ubi degebam causa studendi [...]': *Liber contra*, §19 [1], [d], p. 527.

<sup>267</sup> 'Dominus noster Ihesus Christus turpiter in visceribus matris sue includebatur circa pudenda, per qua de ventre eius exivit': *Liber contra*, §19 [1], [d], p. 527.

<sup>268</sup> Guareschi, 'Gli incontri', pp. 395–99.

<sup>269</sup> Kuttner and Rathbone, 'Anglo-Norman Canonists', p. 319.

<sup>270</sup> Guareschi, 'Gli incontri', p. 413.

<sup>271</sup> Alain of Lille, *De fide catholica*, in PL: 210, col. 415C.

<sup>272</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 308.

is thereby contaminated.<sup>273</sup> In the same way, Christ's contact with Mary did not cause him 'contamination'.<sup>274</sup>

Although Speroni had used the rhetorical argument that Christ was carnally eaten, and thus annihilated, in order to show the absurdity of the real presence in the Eucharist, he did not employ the converse argument: that the Eucharist augmented the body of Christ.<sup>275</sup> This argument, attributed to Berengar, held that, if the theory of the actual physical presence were to be believed, one logical absurdity which would arise would be that a new body of Christ would come into being each day, and that the 'body of Christ' would increase and augment for every Mass that was said.<sup>276</sup> Taking both this notion of augmentation and annihilation together, Cathar preachers stated that the body of Christ was, in reality, in the bread in a quantity 'as great as mountains', which Catholic priests had long ago eaten up.<sup>277</sup> Similarly, Eckbert of Schönau, in his *Disputatio inter catholicum et paterinum haereticum*, reported a Cathar's reference to this augmentation and diminution of the body of the Lord in the Eucharist: 'even if the body of the Lord existed in such quantity that it were the size of Hermelstein, from that time when it first began to be eaten it certainly must have been consumed by now'.<sup>278</sup>

The consensus of orthodox opinion, however, held such views as heretical. Peter Lombard rejected the idea that all the Eucharists celebrated over time added new substance to Christ's historical body, since the body of Christ in the

<sup>273</sup> 'Cum eius totum corpus anima eius vivificaret, si in suo fundamento maiores contraheret sordes anima eius quam in capite ipsius. Item si radius solis in cloaca recipere fetorem aut immundiciam, et si in loco odoramentis pleno sumeret odorem vel mundiciam': *Liber contra*, §19 [1], [d], p. 527. This analogy of the sewers and the perfumed places is similar to that used by Roland of Bologna, *Sententiae*, in *Die Sentenzen Rolands*, ed. by Gietl, p. 235, and cited in *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 308, n. 3. It also bears similarities with the language and metaphor of the goodness of God as light expressed by pseudo-Dionysius, *Divine Names*, C. 4, 4, in *Dionysius the Areopagite on the Divine Names and the Mystical Theology*, trans. by C. E. Rolt (New York: McMillan, 1920), pp. 50–190 (pp. 91–92).

<sup>274</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 309.

<sup>275</sup> Macy, 'Berengar's Legacy', p. 78, n. 59.

<sup>276</sup> Berengar of Tours, *De sacra coena*, c. 20, c. 21, c. 30, c. 37, in *Berengerius Turonensis Rescriptum contra Lanfrannum*, ed. by Huygens, 84, pp. 41, 44–45, 67–68, p. 109.

<sup>277</sup> Walter Wakefield, *Heresy, Crusade and Inquisition in Southern France 1100–1125* (Berkeley: University of California Press, 1974), p. 33.

<sup>278</sup> Eckbert of Schönau, *Disputatio inter catholicum et paterinum haereticum*, c. 14, in PL: 195, col. 92C, cited in Macy, 'Berengar's Legacy', p. 68, n. 67.

Eucharist was immutable, immortal, impassible, and resurrected.<sup>279</sup> This view was shared by Alain of Lille<sup>280</sup> and others such as Anselm of Laon, William of Champeaux, Ivo of Chartres, Hugh of St Victor and Master Simon.<sup>281</sup>

### Transubstantiation

Consistent with this rhetorical understanding of the Eucharist as corporeal and anti-sacerdotal, Speroni insisted that the bread and wine were annihilated in the Eucharist. This occurred, he stated, by the action of the consecrating priest, since nothing was left on the altar.<sup>282</sup> In response, Vacarius explains that this was no annihilation, but a conversion (*convertere*) of the bread and wine into the body and blood of Christ. How this conversion took place, he could not explain,<sup>283</sup> although he describes this mysterious process as a 'transubstantiation'.<sup>284</sup> This was the notion that the substance of the bread and wine was converted into the substance of the body and blood of Christ, with only the accidents of the bread and wine remaining. Everyone knows from Christ's words, claims Vacarius, that the bread did not remain after the consecratory words; whether it was 'transformed' or 'transubstantiated' did not matter, since how it happened defied human understanding.<sup>285</sup>

Vacarius, therefore, briefly acknowledges, but then sidesteps, the significant scholastic debate about the nature of change in transubstantiation. One debate existed between those who understood that this change was by way of

<sup>279</sup> Peter Lombard, *Sententiae*, 4, d. 8, c. 4; d. 8, c. 4; d. 10; d. 11, cc. 1–2; d. 12, cc. 2–3, in *Sententiae in IV libris distinctae*, ed. by Brady, II, pp. 282, 290, 296–97, 304–05. See Colish *Peter Lombard*, II, p. 559.

<sup>280</sup> Alain of Lille, *De fide catholica*, in PL: 210, cols 361A–B.

<sup>281</sup> For example, Hugh of St Victor, *De sacramentis Christianae fidei*, 2.8.3, in PL: 176, cols 462D–464C; Colish, *Peter Lombard*, II, p. 553.

<sup>282</sup> 'Quod missa nichil significet, sed quod fuit destruxit' ('That the Mass signifies nothing, except what was destroyed'): *Liber contra*, p. 501; '[...] nichil remanet in altari a presbitero consecratum': *Liber contra*, §10 [II], p. 502.

<sup>283</sup> 'quia panem et calicem Domini in corpus et sanguinem Christi convertit per Dominican benedictionem': *Liber contra*, §10 [2], p. 502.

<sup>284</sup> '[...] quod panis transsubstantietur': *Liber contra*, §19 [I], [c], p. 522.

<sup>285</sup> '[...] transformari vel transsubstantiari. Nam quamvis non maneat panis post consecrationem, tamen quomodo id fiat humana ratione non comprehenditur': *Liber contra*, §19 [1], [c], p. 525. Baldwin of Canterbury (d. 1190) expressed a similar indifference to terminology as Vacarius: *L'Eresia di Ugo Speroni*, ed. by Da Milano, pp. 299–300; cf. Baldwin of Canterbury, *Liber de sacramento altaris*, in PL: 204, cols 641–774 (col. 662).

transubstantiation, and those who believed the substance of the bread and wine was annihilated (including Roland of Bologna and the 'Scotists'), or dissolved into pre-existing matter (Hugh of St Victor, for example).<sup>286</sup> Vacarius appears to prefer the former view, given his use of the term 'transubstantiation'.<sup>287</sup> Given Vacarius's natural conservatism, it is unusual to find him using the word *transubstantio*, which was a twelfth century neologism.<sup>288</sup>

Further debates ensued in the Middle Ages on whether the change was substantial or merely formal.<sup>289</sup> Peter Lombard and his pupil, Peter of Poitiers, believed that the change was substantial, not merely formal as Robert Pullen and the Porretans had proposed.<sup>290</sup> A mere formal change was impossible, Peter Lombard stated, because the form or accidents of the bread and wine remained after the consecration. As to the issue of what these accidents inhered in, or whether they possessed a substratum, Peter Lombard stated that they inhered in themselves and were attached to no substance.<sup>291</sup> Alain of Lille similarly concluded that, in the incarnation, the *transubstantio* meant a change of the *materia* (matter) and *substantialis forma* (substance) of the bread, but the accidents remained the same (for example, whiteness, roundness, and flavour).<sup>292</sup> Like Peter Lombard, Alain responded that the accidents of the bread remained

<sup>286</sup> Peter Lombard summarized the differing viewpoints on the nature of the Eucharistic conversion: Peter Lombard, *Sententiae*, 4, d. 11, c. 2, in *Sententiae in IV libris distinctae*, ed. by Brady, II, pp. 296–99. See *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 295, n. 1.

<sup>287</sup> '[...] quod panis transsubstantietur': *Liber contra*, §19 [I], [c], p. 522.

<sup>288</sup> Joseph De Ghellinck, 'À propos du premier emploi du mot transubstantio', *Recherches de sciences religieuses*, 2 (1911), 466–69, 570–72; 3 (1912), 255–59; Joseph De Ghellinck, 'Eucharistiae', in *Dictionnaire théologie catholique*, ed. by Alfred Vacant and others, 15 vols in 23 (Paris: Letouzey et Ané, 1899–1972), V, part 1, pp. 1287–93. The word did not have the same narrow sense that it was to have at Lateran IV in 1215: Gary Macy, *The Banquet's Wisdom: A Short History of the Theologies of the Lord's Supper* (Mahwah, NJ: Paulist Press, 1992), p. 81.

<sup>289</sup> Colish, *Peter Lombard*, II, p. 552.

<sup>290</sup> Peter Lombard, *Sententiae*, 4, d. 11, c. 1: 'Formalem tamen non esse cognosco, quia species verus, quae ante fuerint, remanet, et sapor et pondens', in *Sententiae in IV libris distinctae*, ed. by Brady, II, p. 296. See also Peter of Poitiers, *Sententiae libri quinque*, 5, c. 12, in PL: 211, cols 1216–17: 'quia substantia in substantiam transit'. Compare Robert Pullen, *Sententiarum libri octo*, 8.9, in PL: 186, cols 966D–977A, and *Sententiae*, I.4.19–21, 4.23–24, 4.46, in 'Die "Sententiae magistri Gisleberti Pictaviensis episcopi": I', ed. by Häring, pp. 135–36, 136, 141.

<sup>291</sup> Peter Lombard, *Sententiae*, 4, d. 8, c. 4; d. 8, c. 4; d. 10; d. 11, cc. 1–2; d. 12, cc. 2–3, in *Sententiae in IV libris distinctae*, ed. by Brady, II, pp. 282, 290, 296–97, 304–05. See also d. 11, cc. 2.5–10; d. 12, c. 1 (II, p. 298–99, 304). See Colish, *Peter Lombard*, II, p. 559.

<sup>292</sup> Alain of Lille, *De fide catholica*, in PL: 210, cols 359, 361.

‘miraculously’ in the form of the bread by virtue of the divinely-ordained ‘deceiving appearance’ (*fallacie visus*). Hugh of St Victor, in contrast, stated that the *substantia* of the real body and blood replaced the *substantia* of the bread and wine when the elements were consecrated, in a change which he described as a *mutatio*.<sup>293</sup> He argued that the species of the bread and wine remained intact, although it was difficult to describe what the species now inhered in. Like Hugh, many other authors accepted the reality of the change from the bread and wine into the body and blood of Christ as real, but had difficulty in accounting for it. Included in this category were Gratian, Anselm, and followers of Abelard. Vacarius too is aptly included in this theologically orthodox, yet scholastically inarticulate, group.

### Repeatability of the Eucharist

Speroni objected to the repetitive nature of the Eucharist which identified it with other sacrifices. Christ could not have offered Himself repeatedly on the altar in the Eucharist, he argued, since Christ would not enter the ‘holy places made of hands, which are copies of the true’ (Hebrews 9. 24).<sup>294</sup> Like the one-off sacrifice of a goat or animal, Christ’s singular death on the cross was sufficient to expiate sins; there was no need for a ritual such as the Eucharist to repeat this.<sup>295</sup>

Contrary to Speroni’s understanding, Vacarius states that Christ offered Himself ‘spiritually’ on the altar through the intermediary of his ministers, that is, in the form of His body and blood. Yet, on the other hand, He also ‘naturally’ entered the ‘holy places made of hands’ in a similar manner to the entry of animal sacrifices in the temple.<sup>296</sup> The repeated appearance of Christ in the Eucharist is similar to any other sacrifice, Vacarius states, although Christ truly sacrificed Himself only once: in the Passion, not the Eucharist.<sup>297</sup> Da Milano

<sup>293</sup> Hugh of St Victor, *De sacramentis Christianae fidei*, 2.8.7–9, 2.8.13, in PL: 176, cols 666C–468C, 470B–471C.

<sup>294</sup> *Liber contra*, §19 [1], [e], p. 529; §19 [1], [f], [I–II], p. 530.

<sup>295</sup> *Liber contra*, §19 [1], [f], [III], p. 530; *L’Eresia di Ugo Speroni*, ed. by Da Milano, p. 279.

<sup>296</sup> ‘In prima obiectione quam brevissime respondeo, quod aliud est omnino corpus et sanguinem Christi per benedictionem Domini, que fit per ministros eius, spiritualiter in altari offerri et aliud penitus est, secundum intentionem Apostoli, Christum *in sanctis manufactis* naturaliter introire, ad similitudinem quodammodo introitus hyrcorum et vitulorum’: *Liber contra*, §19 [1], [f], [1], pp. 530–31.

<sup>297</sup> ‘In secunda quoque obiectione non mentitur Apostolus simili ratione, dicendo quod Christus semel tantum se obtulit, de naturali oblatione ad passionem vel mortem corporaliter

suggested here that Vacarius was distinguishing the mystical Eucharistic sacrifice from Christ's natural sacrifice on the cross.<sup>298</sup>

Although noting similarities between the Eucharist and other kinds of sacrifices, Vacarius also draws on differences in the Eucharist. Vacarius turns to a phrase that Speroni had used from Hebrews 10. 1–2, to the effect that 'these same sacrifices offered continually' could never make those who approached 'perfect'. But if the host on the altar fails to make those who approach perfect, Vacarius argues, it does not mean that the Eucharist is not different from these animal sacrifices. This is because it commemorates Christ's Passion, thereby guarding the devoted from the clutches of the devil and renewing their devotion. In this way, from virtue they grow in virtue, so that the host makes those who approach even more perfect.<sup>299</sup> But Vacarius stresses the virtue of repeatability in the Mass. In commemorating the Lord's Passion, he states, one counters the fragility of human nature and the continual danger of lapsing into sin. On this basis, Vacarius advocates daily Mass.<sup>300</sup>

Thus, for Vacarius, the very notion of repetition is of prime importance from a pastoral, as well as a theological, perspective. The Eucharist for him is a prophylactic against sin and therefore serves a practical role in the care of souls. Furthermore, Vacarius interprets the Eucharistic sacrifice as part of the New Law, prefigured in the Old Testament sacrifices of the paschal lamb, the manna in the desert, and Melchizedek. In doing so, he follows the example of twelfth-century theologians such as Peter Lombard. Peter confirmed that these analogies from the Old Testament were merely figurative in their foreshadowing of the Eucharist.<sup>301</sup>

sustinendam intellexit': *Liber contra*, §19 [1], [f], [2], p. 531. Vacarius refers to the Apostle Paul, although the book of Hebrews is now attributed to a different author: *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 317.

<sup>298</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 321.

<sup>299</sup> 'In tertia autem obiectione dicendum est quod non sequitur, si non facit perfectos altaris hostia, nichil ab hyrcorum hostia differt; quia cum ad memoriam passionis Domini fiat, custodiendo perfectos contra diaboli insidias et reficiendo devotos suos, ut *de virtute in virtutem* crescant, eos perfectiores facit': *Liber contra*, §19 [1], [f], [3], p. 531.

<sup>300</sup> '[A]d predictam memoriam necessaria est hostia propter nimiam fragilitatem humane nature et propter insidias diaboli qui non cessat cottidie quere *quem deveoret*. Ideo etiam ipse Dominus docuit nos hanc hostiam cottidie petere': *Liber contra*, §19 [1], [f], [4], p. 531.

<sup>301</sup> Peter Lombard, *Sententiae*, 4, d. 8, cc. 2–3, c. 5, in *Sententiae in IV libris distinctae*, ed. by Brady, II, pp. 280–84.



### Terminology and Liturgy in the Mass

To a question put by Speroni, Vacarius is forced to define and clarify exactly what constitutes the Mass (*missa*).<sup>302</sup> It is itself an office (*officium*) of the Church, and for this reason, Vacarius notes, it is sometimes called the ‘office of’ the Mass (*officium missae*). But it is also sometimes just called the Mass (*missa*).<sup>303</sup> Vacarius also distinguishes *missa* from the constituent parts of the Mass, the seven *officia*.<sup>304</sup> The reason why the word *missa* was used to denote the Eucharist, Vacarius further explains, is down to the word’s etymological derivations. It derives from the verb *mitto* (‘to send’) because, in the office of the Eucharist, a ‘delegation’ of Christ represents itself to us, because a delegation of the Father carries it out for the sake of humankind. Further, in consecrating the host, the priest is a legate sent by God on behalf of the faithful. The term *missa* also derives from the cognate word *dimissio* (‘to send away’, or ‘dismiss’), in the sense that the Mass is a dismissal once judgment is made, much like the discharge of a judicial assembly.<sup>305</sup> Da Milano noted that the term *missa* was commonly used in the early twelfth century, by such writers as Isaac of Stella (d. 1169) and Hildebert of Mans (d. 1133), in reference to the Mass.<sup>306</sup> Such writers, however, may not have been aware, as Vacarius was, of the judicial significance of the term.

Slightly earlier in the treatise, Vacarius also calls the Mass *eucharistia*. He relies here on a pseudo-Augustinian authority, which was in fact pseudo-Ambrosiaster. Vacarius notes this reference to *eucharistia* as an ‘offering of Christ

<sup>302</sup> *Liber contra*, §20 [XI], p. 542.

<sup>303</sup> ‘Missa est ipsum officium; et dicitur misse officium, id est officium quod missa est’: *Liber contra*, §20 [II], p. 542.

<sup>304</sup> Vacarius names four of the *officia*: ‘obsecrationes, orationes, postulationes, gratiarum acciones’ (supplications, prayers, intercessions, giving of thanks): *Liber contra*, §20 [II], p. 542; cf. 1 Timothy 2. 1. Earlier in the treatise he hints that the remaining three are the ministration of a priest, the sacrifice of Christ’s body, and the sacrifice of His blood: ‘Ad cuius partitionem accedit corporis et sanguinis Domini sacrificium, quod in fine misse celebratur. Nec impedit improbi sacerdotis ministerium’: *Liber contra*, [F], pp. 478–79. See also *L’Eresia di Ugo Speroni*, ed. by Da Milano, p. 313. In both passages, Vacarius notes that Mass ought to be celebrated for the dead as well as the living.

<sup>305</sup> ‘Missa autem legatio dicitur, quia in eius officio nobis legatio Christi representatur, quia pro humano genere Patris legatione fungitur. [...] A missione etiam missa dicitur, quia populus, qui quasi ad iudicium venit, peracta causa, a iudice dimittitur’: *Liber contra*, §20 [II], p. 542.

<sup>306</sup> *L’Eresia di Ugo Speroni*, ed. by Da Milano, p. 312.

for the deserving' (*merito oblatio Christi*).<sup>307</sup> For Vacarius, this re-emphasizes the notion of thanksgiving, both in its similarity of sentiment to what he earlier termed *gratiarum acciones*, and in its etymological link to the Greek word *eucharistiae* ('thanksgiving'). Peter Lombard and the anonymous author of the *Summa Sententiae* also used pseudo-Ambrosiaster to draw attention to this link.<sup>308</sup> Vacarius is alive to the human motive which is at the base of this sacramental term, and therefore alive to pastoral influences of his rhetoric.

Speroni argued that the Mass was merely a meal commemorative of the Last Supper, a 'Lordly meal' (*cena doménica*).<sup>309</sup> By a literal interpretation of the Gospels' account of the institution of the Lord's Supper, he envisaged the *cena doménica* as a faithful re-enactment of this event.<sup>310</sup> Further, when Christ said to his Apostles, 'This is my body', He did not say this so that they could give it to others; therefore such words benefited only the Apostles themselves.<sup>311</sup> Only they could share in this commemorative meal of re-enactment.

Vacarius rejects the notion that the Mass is merely a meal of this kind, clarifying the significance of the words of Christ in the Gospel accounts. When, according to the Gospels, Christ blessed the bread and wine and gave them to his disciples, Vacarius states, He did not in this way order that His disciples 'do this *meal* in memory of Him'; instead, he referred to their sharing in the particular bread and wine of benediction.<sup>312</sup> That Christ meant his actions as a special performative act, distinct from the meal, is obvious, since Christ waited until the meal was over; further, He used only one loaf and one cup, clearly not

<sup>307</sup> '[Q]uod eucharistia vocetur [...] Unde merito Christi oblatio per Augustinum, a quo recessisti, eucharistiae nominatur': *Liber contra*, §19 [1], [c], pp. 525–26. Da Milano has shown that this was not in fact Augustine's text, but that of pseudo-Ambrosiaster: *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 525, n. 1; cf. pp. 292, 302–03.

<sup>308</sup> For example, *Summa sententiarum*, 6, c. 2, in PL: 176, 139B; Peter Lombard, *Sententiae*, 4, d. 8, c. 1, in *Sententiae in IV libris distinctae*, ed. by Brady, II, p. 787. See *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 303, n. 3.

<sup>309</sup> 'Errando etiam dicis quod Dominus Iesus discipulis precepit ut in mem(ori)am ... ) eius cenarent': *Liber contra*, [F], p. 478; 'Dominum Ihesum et Apostolum dixisse discipulis quod simul convenirent manducare cenam dominicam': *Liber contra*, §20 [1], p. 531.

<sup>310</sup> Compare the account in Matthew 26. 26.

<sup>311</sup> 'Dicis etiam: Non precepit Dominus discipulis ut aliis darent': *Liber contra*, §20 [10], p. 534.

<sup>312</sup> 'Quod itaque preceptum *hoc facite in meam commemorationem* non ad ipsam cenam refertur, sed specialiter ad panem et calicem benedictionis': *Liber contra*, §20 [10], [1], p. 532; cf. Matthew 26. 26–28; Mark 14. 22–24; Luke 22. 17–20; 1 Corinthians 11. 24–25.

enough had He intended a meal for twelve people.<sup>313</sup> Speroni misinterprets the words of Jesus as mandatory when they were not, argues Vacarius: He did not say, imperatively, 'eat and drink with your brothers'.<sup>314</sup>

According to Vacarius, to accept Speroni's overly prescriptive interpretation of the *cena doménica* would be to insist that the ritual comprise no more, and no less, than twelve people; that only one loaf, or cup, be used; and that the presence of Christ in communion with his disciples would also be necessary.<sup>315</sup> Such exactness in form is simply not a part of the Eucharist, argues Vacarius, and is contrary to the Apostles' accounts in which there were no specific prohibitions in the Mass.<sup>316</sup> Vacarius later concedes a limited concept of Speroni's *cena Domenica*. He observes that the Pope and cardinals 'on the day of Jupiter just before Easter' (Maundy Thursday) ate such a meal, but without the Mass and sacrament. He reinforces his main point, however, that the Mass is usually conducted without any meal.<sup>317</sup>

Vacarius continues to explain the true meaning of the words of Christ in the Gospels. Although the form of words used by Christ ('This is *my* body') may imply it, they do not mean that only the Apostles could take the Eucharist. This, Vacarius argues, would be a strange interpretation of Christ's words; for surely if I were to give you some bread, would I not naturally say 'Take it, this is my bread'?<sup>318</sup> This does not imply that it is intended only for you; it could well be for others too. Indeed, the Lord permitted his disciples to give it to others by dint

<sup>313</sup> *Liber contra*, §20 [10], [1], p. 532.

<sup>314</sup> 'Sed dicito mihi: Ubi dixit hoc Dominus: Manducate hoc mecum communiter et cum fratribus?': *Liber contra*, §20 [9], p. 540.

<sup>315</sup> '[S]icut dicis, certam formam prescripsisse, hanc scilicet [...] numquid XII oportet esse fratres, sicut fuerunt Apostoli, et non plures vel pauciores? Et de uno pano et uno calice participare debent et non [de] pluribus? Et utrum panis et calix equaliter debent distribui et sine cena sumi?': *Liber contra*, §20 [9], p. 540.

<sup>316</sup> '[N]ulla forma disposita erat, neque distribuendi, neque conveniendi, neque manducandi; et idcirco et ipsi Apostolo pro qualitate et condicione personarum, temporum et rerum, et aliis magistris ecclesie disponere et ordinare cur non licuit, quando nusquam prohibitum erat?': *Liber contra*, §20 [9], p. 541; '*Cetera cum venero disponam*': *Liber contra*, §20 [9], p. 541, quoting 1 Corinthians 11. 34 ('The rest I will set in order when I come.').

<sup>317</sup> 'Ego autem dominum Papam cum cardinalibus die Jovis proxima ante pascha vidi edentem in memoriam Dominice cene, absque missa et sacramento. Nos vero sacramento communicamus sine cena': *Liber contra*, §20 [12], p. 542. Maundy Thursday, the Thursday before Easter, was in commemoration of Jesus's institution of the Eucharist, and in the twelfth century was called the *mandatum*: *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 328.

<sup>318</sup> *Liber contra*, §20 [10], pp. 541–42.

of the fact that he did not explicitly prohibit them doing so, Vacarius argues. For in every law, what is not prohibited is normally permitted.<sup>319</sup> Perhaps implicit in Vacarius's account is that the lack of exact correspondence to the consecratory words of the priest at Mass ('This is the body of the Lord') surely demonstrates quite clearly that it was Christ's body, and not the priest's, which is offered in the Eucharist.<sup>320</sup>

Vacarius corrects another example of Speroni's flawed exegesis of these words of consecration. When Christ said, 'This is my body', argued Speroni, He meant this as a mere sign (*significatio*) or record (*recordatio*) of his body, rather than His actual body. This was because His subsequent words, in the Gospels' accounts, stated, 'Do this in memory of me'.<sup>321</sup> This is wrong, Vacarius counters; the words 'This is my body' are to be understood literally of Christ. Other passages in the Gospels only confirm this; indeed, everyone, bar Speroni himself, seems to understand this as the clear meaning of the passages from the Gospels. It is decisively proven in the words of Paul: 'Observe Israel after the flesh: are not those who eat of the sacrifices partakers of the altar?'<sup>322</sup>

Speroni railed against the neologisms used by Churchmen to explain the Mass, which led on to his criticism of its ritualistic elements. Speroni critiqued the scholastic terms which had become part of accepted explanations of the Eucharistic, such as Christ's 'mystical' death or 'immolation', His 'offering Himself' on the altar, the 'transubstantiation' of the bread, the 'singing' of the Mass, and the Mass for the dead.<sup>323</sup> Where did such terms come from?, asked

<sup>319</sup> '[Q]uod Dominus discipulis permisit ut aliis darent ex eo quod non prohibuit. Regulariter enim omni lege permittitur quod nulla prohibetur': *Liber contra*, §10 [9], p. 542. Vacarius here echoes the concept of *libertas* in the *Digest*: 'Libertas est naturalis facultas eius quod cuique facere libet, nisi si quid vi aut iure prohibetur'. Justinian took the definition from Book 9 of the Florentine *Institutes*, and inserted it in *Digest*, 1.5.4 and *Institutes*, 1.3.1. See *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 326.

<sup>320</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 327. Significantly, neither Speroni nor Vacarius considered the formula, in which the priest said 'The body of the Lord', to which the believer replied 'Amen'. Here there was no deviation from the actual words of Christ.

<sup>321</sup> *Liber contra*, §20 [V], pp. 537–38.

<sup>322</sup> 'Tu tamen, etiam hic, est pro significatione positum [esse] asseris. Quod vere ridiculosum est [...] Quod autem Apostolus contra te senciatur, sicut supra ostensum est, etiam ex eo manifestum est quod sequitur: *Videte*, inquit, *Israel secundum carnem*. Nonne qui edunt *hostias participes sunt altaris*?': *Liber contra*, §20 [5], p. 538; cf. 1 Corinthians 10. 18.

<sup>323</sup> '[Q]uod Christus Dominus in altari mystice moriatur, quod dentibus conteratur, quod panis transsubtancietur, quod missa cantetur et in ipsa sacrificium offeratur? Quis Prophetarum aut Apostolorum voc docuit missam pro mortuis cantare?': *Liber contra*, §19 [I],

Speroni; certainly not from the Apostles or the New Testament. In the same way, other parts of the Church, namely Church towers, bells, painted images, crosses, idols, incense, and candles existed without biblical foundation.<sup>324</sup> Da Milano noted the similarity between Speroni's arguments and those made by Cathars against the notion of transubstantiation.<sup>325</sup>

Vacarius is at pains to emphasize the importance and legitimacy of the Mass's accompanying liturgy. As previously observed, he recognized that prayers, entreaties, and thanksgivings were part of the office of the Mass.<sup>326</sup> Vacarius stresses that temples were built to allow people to assemble in one place, and, as a consequence, church towers and bells were erected, since all these elements were in place to honour God, and were for the salvation of all.<sup>327</sup> What, Vacarius asks, better represents the Passion of Christ than the cross itself and images of Christ?<sup>328</sup> They are quite different from the pagan idols that were once worshipped.<sup>329</sup> In this way, Vacarius justifies the need for the objects of cult and worship.<sup>330</sup>

It would seem that Speroni had singled out for criticism the hymns forming part of the Mass, since Vacarius is at pains to clarify the distinction between the two. Although hymns are sung as part of the Eucharistic Mass, he notes, the Eucharist itself is not 'sung'. In the same way, the traditional monastic Day Hours of Primes and Terce comprise hymns as well as lessons, Psalms, prayers

[c], p. 522; see *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 274.

<sup>324</sup> 'Quis docuit vos turres hedificare, tintinabula pulsare, simulacra pingere, cruces erigere, ydola fabricare, ea colere, adorare, osculari, thus offerre, luminaria ante ipsa accendere? Que est maior cultura quam hec?': *Liber contra*, §19 [1], [c], p. 522.

<sup>325</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 274, n. 1; cf. Alain of Lille, *De fide catholica*, 1. 59, in PL: 210, col. 363.

<sup>326</sup> *Liber contra*, [11], p. 542.

<sup>327</sup> 'Qui docuit ad congregandos populos in unum templa extruere, per consequenciam et turres hedificare et tintinabula pulsare, cum ad honorem Dei et populorum salutem simul hec omnia pertineant': *Liber contra*, [19], [c], p. 526.

<sup>328</sup> 'Quid enim magis passionem et mortem eius representat, quam ipsa crux et imagines eorum, qui in ipsa eius passione interfuerunt et de cruce deposuerunt et eum sepelierunt?': *Liber contra*, [19], [c], p. 526.

<sup>329</sup> 'Certe non est hec ydolorum cultura, que ad falsos deos pertinet colendos et venerandos': *Liber contra*, [19], [c], p. 527.

<sup>330</sup> Da Milano extrapolates that such images assisted the unlettered in understanding the Eucharist which, while true, does not appear in Vacarius's text: *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 309.

and so on; therefore, while these Hours comprised song, they were not ‘sung’.<sup>331</sup> In short, the part does not stand for the whole.

That term describing the Eucharist as a ‘sacrifice’ was particularly antithetical to Speroni. The sacrifices mentioned in Scripture were against the will of God, he argued.<sup>332</sup> Vacarius responds specifically to this argument, and more broadly to the legitimacy of the ritualistic elements of the Mass. Sacrifices and similar offerings of incense and oil are lawful, points out Vacarius, since they are made figuratively of the true sacrifice of Christ.<sup>333</sup> Thus, these ‘sacrifices’ are not against Christ’s will, but in fact in deference to his order to do them. As such, Vacarius argues that the liturgy and cult of the Eucharist has a place in law, and it is at this point that he reminds Speroni of their shared juristic heritage.<sup>334</sup> Da Milano observed that Vacarius here hints at Justinian’s *Code*, which was Christian in its inspiration, as evidenced by various privileges and rights such as the right of asylum and the right of immunity. These related to both the Church and its places of cult, but existed in secular laws.

Macy distinguished three interpretations of the salvific function of the Eucharist which were current in the twelfth century. The first, lasting to the first half of the twelfth century, was based on the theology of Paschasius Radbertus, which viewed the natural contact between the recipient and Christ as the cause of grace. For the ‘Paschasians’, the real presence of Christ was of supreme importance, as was the mode of that existence; further, the sacramental reception of the Eucharist was necessary for salvation. Second, from the mid-twelfth century to the thirteenth century was the ‘mystical’ view which determined that the purpose of the Eucharist was as a symbol of the mystical union in faith and love between the worthy believer and God. This view was ascribed to by the schools of Laon and St Victor. Peter Lombard also gave emphasis to the inner life, the so-called ‘mystical’, or subjective, view of the Eucharist.<sup>335</sup> The third

<sup>331</sup> ‘[S]i attendas quod quamvis prima pars diei vel tertia [cantatur], non ideo tamen quia dicitur: Prima cantatur, tertia cantatur’: *Liber contra*, §19 [1], [c], p. 526.

<sup>332</sup> *Liber contra*, §20 [XIV], p. 543; cf. Psalms 39. 7–8.

<sup>333</sup> ‘Nam quod de sacrificio et oblatione legali hec dicantur, non attendis; scilicet de sacrificio legalium et oblatione simile, et thuris et olei; que in figura veri sacrificii fiebant, scilicet Domini nostri Ihesu Christi’: *Liber contra*, §20 [14], p. 544.

<sup>334</sup> *L’Eresia di Ugo Speroni*, ed. by Da Milano, pp. 310–11.

<sup>335</sup> Peter Lombard, *Sententiae*, 4, d. 8, c. 1, c. 7; d. 12, c. 6.1; esp. d. 8, c. 1, in *Sententiae in IV libris distinctae*, ed. by Brady, II, p. 280, 284–86, 310. The differences between these two was that, for the ‘Paschasians’, the real presence of Christ was of supreme importance, as was the mode of that existence; further, the sacramental reception of the Eucharist was necessary for

approach, from the late twelfth century to the thirteenth, was the 'ecclesiastical' approach, which spoke of the Eucharist as a sign of the unity of Christ and church. Hugh of St Victor adopted this 'ecclesiological' or sacramental understanding of the way the Eucharist was internalized.

Vacarius does not fit clearly within any of these three paradigms. His concern with explaining the real presence, and the language he uses, is 'Paschasian'. His linking of the Eucharist to the hypostatic union is a clear attempt to assert Christ's real presence. Nevertheless, his concern to preserve the unity of Christ and man, and by analogy, Christ and church, resembles Macy's 'ecclesiastical' approach. But his unique combination of biblical exegesis, canonical science, and civilian analogizing make it difficult to restrict him to this third schema. It seems that Vacarius adopts an all-embracing approach in the face of an issue which is of significant pastoral concern to clergy in England and Europe. Like Colish, therefore, I suggest that Vacarius transcends this tripartite schema.

### *Part V: Sacramental Matters: Penance and Confession*

As with the sacrament of the Eucharist, Speroni rejected the efficacy of confession. Like baptism by water, or the Eucharist, it was not effective or useful in purifying or purging sin.<sup>336</sup> The reason why, according to Speroni, was that the individual's purpose (*propositum*) was not, and could not be, changed by the act of confession.<sup>337</sup> As discussed below, Speroni's understanding of justification held that this internal purpose alone determined one's ultimate judgment before God, without the need for external works. In particular, the 'elect', being in a permanent state of immutable sanctity, were guaranteed justification. Therefore, for Speroni, a type of 'mental' confession or penance of the mind sufficed.<sup>338</sup>

salvation. For the 'mysticals', on the other hand, the presence of Christ on the altar, while not denied, symbolized rather than directly caused salvation. Questions on the mode of the existence of the real presence were, therefore, less pressing. Further, for this second group, the sacramental reception of the Eucharist was a sign of, rather than necessary for, the salvific union with God. Such a union could be achieved apart from the actual participation in the sacrament; it could be achieved individually, in a mystical ascent to God, of which the eucharist was a sign, but not a necessity. See Macy, *The Theologies of the Eucharist*, pp. 137–38. cf. Colish, *Peter Lombard*, II, p. 565; Hugh of St Victor, *De sacramentis Christianae fidei*, 2.8.1, in PL: 176, col. 461D.

<sup>336</sup> *Liber contra*, §31 [II], p. 566; [V–5], p. 570.

<sup>337</sup> *Liber contra*, §31 [III], p. 567.

<sup>338</sup> '[I]n perfecta penitentia mentis [consistit]': *Liber contra*, §31 [2], p. 567.

Vacarius responds that oral confession is of great force; it is necessary and useful, according to Scripture, to confess sins so that, in turn, one can pray and be saved.<sup>339</sup> He dismisses any notion of mental confession which could be done without words, whether ‘by heart’ or ‘by mind’.<sup>340</sup> Moreover, Vacarius emphasizes the point that oral confession presupposes a very different notion of justification, one whereby an individual’s inner intention may change over time. What was important was one’s final intention just before death.<sup>341</sup> He thus rejects Speroni’s concept of interior confession, insisting on the oral ritual.

Vacarius’s firm views on the need for oral confession arise in the context of the mid- to later-twelfth-century confessionist-contritionist debates. Of the three-stages in penance, namely contrition, confession, and satisfaction, the issue arose as to when the penitent’s status changed. Those Church thinkers who favoured the confessionist position, like Vacarius, insisted on the need for oral confession to a priest, and saw in this act the change in the penitent’s status. Contritionists, on the other hand, similarly to Speroni, saw the need for interior repentance for sin only, so that the first step of contrition was sufficient for penance. For Peter Lombard, who represents the orthodox position, contrition was the primary step; for Peter, however, confession is merely optional, whether to a priest or a judicious lay person, a position which puts him at the ‘radical fringe’ of orthodoxy.<sup>342</sup> Therefore, Vacarius adopts a rather conservative view of the need for oracular confession, a position slightly out of step with the prevailing orthodoxy.

But, in a sense, Vacarius’s conservative approach is reflective of the increasing trend towards pastoralism in the confessional. There is clear evidence in the third quarter of the twelfth century of a growth in the phenomenon of the *summae confessorum*, manuals composed for confessors setting out the appropriate penance to match each sin. Payer has described how, following the composition of Gratian’s *Decretum* in around 1140, and Peter Lombard’s *Sententiae* in around

<sup>339</sup> ‘Magna ergo est vis confessionis. Unde alibi: *Corde creditur ad iusticiam, ore vero confessio fit ad salutem*. [...] His rationibus et auctoritatibus creditur esse utilis et necessaria in Ecclesia Dei confessio, per quam, sicut Scriptura precipit, alterutrum confitemur peccata nostra, ut sic pro invicem orare possimus et salvari’: *Liber contra*, §31 [2], p. 567.

<sup>340</sup> ‘[N]eque in plenitudine fidei cordis, neque in perfecta penitentia mentis [consistit]’: *Liber contra*, §31[2], p. 567.

<sup>341</sup> ‘[N]on initium attendere debemus, sed finem, quamvis in medio sit variatum’: *Liber contra*, §31 [3], p. 567; cf. Luke 23. 43.

<sup>342</sup> Marcia L. Colish, ‘Peter Lombard’, in *The Medieval Theologians*, ed. by Gillian R. Evans (Oxford: Blackwell, 2001), pp. 168–83 (p. 180).



1157, the 'old style' confessional manuals, called *libri penitenciales*, which were concerned with the actual practice of confession, such as interrogation, instruction, and imposition of penances, changed. In their place the new *summae confessorum* came to the fore, displaying a sophisticated knowledge of contemporary canonical studies and a reflective, probing awareness of conceptual difficulties.<sup>343</sup> These *summae* were designed to educate priests with the knowledge necessary for them to administer confession, reflecting a growing concern with the pastoral needs of the Church and of the intellectual and moral instruction of the pastoral clergy.<sup>344</sup> Arguably, this demonstrated a trend towards the more pastorally-oriented orthodoxy of oracular confession, achieved at the Lateran Council in 1215; Vacarius is in tune with this trend.

## *Part VI: Other Theological Matters*

### **Justification**

Vacarius's discussion of justification, and the means for attaining it, departs little from Catholic orthodoxy, but it demonstrates nevertheless his unique legal and theological apologetic. Justification is the act whereby God, in virtue of the sacrifice of Christ, acquits mankind from punishment for his sins, and in His mercy treats him as though he were righteous.<sup>345</sup> In a twelfth-century context, Peter Lombard defined justification as this release from sin.<sup>346</sup> In order to

<sup>343</sup> Pierre J. Payer, 'The Humanism of the Penitentials and the Continuity of the Penitential Tradition', *Mediaeval Studies*, 46 (1984), 340–54 (pp. 340–42); Pierre J. Payer, 'The Origins and Development of the Later *Canones Penitenciales*', *Mediaeval Studies*, 61 (1999), 81–105 (pp. 81–83); Pierre J. Payer, 'Confession and the Study of Sex in the Middle Ages', in *Handbook of Medieval Sexuality*, ed. by Vern L. Bullough and James A. Brundage (New York: Garland, 1996), pp. 3–8; Leonard E. Boyle, 'Summae confessorum', in *Les genres littéraires dans les sources théologiques médiévales: définition, critique et exploitation. Actes du colloque internationale de Louvain-la-Neuve, 25–27 mai 1981* (Louvain-la-Neuve: Institut d'Études Médiévales de l'Université Catholique de Louvain, 1982), pp. 227–37.

<sup>344</sup> Leonard E. Boyle, 'The Inter-Conciliar Period 1179–1215 and the Beginnings of Pastoral Manuals', in *Miscellanea Rolando Bandinelli Papa Alessandro III*, ed. by Filippo Liotta (Siena: Accademia Senese degli Intronati, 1986), pp. 43–56; Joseph Ward Goering, 'The Internal Forum and the Literature of Penance and Confession', *Traditio*, 59 (2004), 175–227.

<sup>345</sup> E. A. Livingstone, *Oxford Concise Dictionary of the Christian Church* (Oxford: Oxford University Press, 1977; repr. 1996), v. "Justification".

<sup>346</sup> Peter Lombard, *Sententiae*, 3, d. 19, c. 1. 2, in *Sententiae in IV libris distinctae*, ed. by Brady, II, p. 118.

understand Vacarius's views on justification, it is necessary to first outline Speroni's ideas on this topic, since Vacarius's treatment of the issue is responsive to this, rather than positive in its own right.

As we have seen, Speroni argued that 'only the pure could be purified'.<sup>347</sup> The theological basis for this position was his unique notion of predestination for an elect few. Purity, he indicated, was given both outwardly and inwardly to those who were 'inwardly' pure. If one had the requisite inner desire for purification, outward purity followed. In Speroni's view God perceived the future and past from the perspective of the 'eternal present'.<sup>348</sup> With this vantage point, continued Speroni, before time itself God chose those who were pure in his eyes, and predestined them to be purified.<sup>349</sup> Da Milano called this Speroni's notion of 'double justice' or 'double purity'.<sup>350</sup> This double justice enabled one who 'desired' purity 'in his heart' to become purified, even if he was externally impure.<sup>351</sup> In Speroni's view, all those who were predestined to life inwardly, that is 'before God's eyes', had life, even if they were defiled amongst men for committing crimes.<sup>352</sup> Further, Speroni's discounting of human agency and free will led him to implicitly support a doctrine of 'double predestination', whereby the elect would be predestined to paradise, while the reprobate would be predestined to damnation and hell.<sup>353</sup> This flawed notion of justification lay at the heart of Vacarius's criticism of Speroni's ideas.

Vacarius responds initially in a purely semantic vein: is not the word 'purify' meaningless if it does not refer to the *impure* being purified?<sup>354</sup> To say otherwise, would be ridiculous, comments Vacarius.<sup>355</sup> For what else did 'purify' (*mundare*)

<sup>347</sup> *Liber contra*, [C], p. 476; §8, p. 497.

<sup>348</sup> *Liber contra*, §12 [I], p. 506.

<sup>349</sup> *Liber contra*, §12 [IV], p. 508.

<sup>350</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, pp. 206–07.

<sup>351</sup> *Liber contra*, [C], p. 476; §8 [I–III], pp. 497–99.

<sup>352</sup> 'Intrinsecus autem, id est apud Deum, fuerant mundi, quia in conspectu suo Altissimus ea, que futura apud nos et que preterierunt, tamquam presentia respicit': *Liber contra*, §12 [I], p. 506; 'Sed ego scio quid dices, scilicet quod secundum interiorem hominem aliquis est mundus, qui secundum exteriorem est immundus': *Liber contra*, § 8 [II], p. 498.

<sup>353</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 199, n. 1.

<sup>354</sup> 'Quid enim est mundare, nisi immundiciam remove, que immundum facit?': *Liber contra*, [C], p. 476.

<sup>355</sup> 'Et adeo verum apparet esse hoc, quod immundi mundantur, ut ridiculum sit contradicere. Qui sunt enim qui magis indigeant mundari quam immundi?': *Liber contra*, §8[I], p. 498.

mean, than to render someone pure who was previously impure?<sup>356</sup> This leads on to more substantive theological arguments.

In discussing works, Vacarius rejects the idea of a purely internal means of achieving justification from sins, and the notion of double justice in particular. It is not enough merely to inwardly desire freedom from sin: one had to also stop sinning externally.<sup>357</sup> He affirms the need for works. The passage in Galatians 5. 14 that, 'Every law is fulfilled in one word', Vacarius observes, does not mean, as Speroni would have it, that love or *caritas* alone is enough. Instead, he cites a passage from II Thessalonians 3. 10 which establishes that, while the New Law freed humankind from the laws and works of the Old Law, it did not free humankind from the obligations of works of charity. The New Law proceeded from love (*caritas*), rather than fear in its achievement of justification.<sup>358</sup> But love and faith are linked to works: thus, faith (or desire) alone does not suffice for justification, but with works it does; this is *caritas*.<sup>359</sup> This position of Vacarius on the need for works of charity accords with the consensus position in the mid-to later-twelfth century, as outlined in authors such as Peter Lombard.<sup>360</sup> The most significant of these works, Vacarius points to, is the Eucharist, without which there is no charity.<sup>361</sup> Confession, in addition, is a necessary remedy for purging sin, as discussed above. Further, other aids to the Christian life are also included, such as feast days, singing of psalms, praying, and the observance of fasting at Lent.

<sup>356</sup> 'Quid enim est mundare, nisi immundiciam remove, que immundum facit?: *Liber contra*, Prologue, [C], p. 476; 'Et adeo verum apparet esse hoc, quod immundi mundantur, ut ridiculum sit contradicere. Qui sunt enim qui magis indigeant mundari quam immundi? [...] Quid enim aliud est mundare nisi immundiciam remove ab eo quem ipsa immundum facit?': *Liber contra*, §8 [1], p. 498.

<sup>357</sup> '[C]onstat quod non sufficit desiderium cessandi, nisi cesset adulter ab adulterio, ut sit mundus': *Liber contra*, §8 [1], p. 497.

<sup>358</sup> 'Nam libertas, quae nobis datur per legem Ihesu Christi a servitute legis et operum eius non liberat, et non a servitute operum caritatis': *Liber contra*, [H], p. 480; cf. *Liber contra*, §24 [2], pp. 549–50.

<sup>359</sup> 'Utrumque itaque desideratur: et studium, id est voluntas, et via, id est operatio. Hec enim continentur in ea fide que sufficit ad iusticiam, hoc est in ea fide *que per dilectionem operatur*': *Liber contra*, §24 [1], p. 549; cf. Galatians 5. 6.

<sup>360</sup> Peter Lombard, *In Epistolam S. Pauli ad Romanos*, 1:8–10, 3:19–4:8, in PL: 191, cols 1322D–1325A, 1358D–1367D. See the bibliography given by Colish on the consensus position: Colish, *Peter Lombard*, I, p. 214, n. 151.

<sup>361</sup> 'Et ego similiter dico quod sine corpore et sanguine Christi caritas non est': *Liber contra*, §30 [2], p. 565.

Vacarius also rejects Speroni's distinction between the 'interior' and 'exterior' in man, such that man's exterior moral conduct and actions could be considered as unrelated to his interior spiritual condition before God. Such a distinction, he states, vitiates against the substantial and personal unity of the individual, which was indivisible.<sup>362</sup> Two opposing moral states cannot exist in the same person at the same time, without splitting or duplicating that person. Impurity induced by sin, in this analogy, is both a moral judgment of God as well as of man, he implies. Vacarius's language here is reminiscent of his explanation of the personal or hypostatic union, a discussion taken up in the previous chapter of this book.

Vacarius rejects Speroni's notion of 'double justice' on the theological basis of divine foreknowledge. Divine foreknowledge was a concept by which God considered and evaluated all the diverse and successive states of a soul in the present and future. For Vacarius, both the pure and the impure necessarily existed in God's eyes, that is, by God's foreknowledge.<sup>363</sup> God saw the same person in their diverse situations during their lifetime, both pure and impure. For example, the Apostle Paul was seen by God as present for all eternity, whether as a persecutor of the church or as Apostle. Equally, the Corinthians were seen by divine foreknowledge both in their pre-conversion, sinning ways, and in their post-conversion lives, when they were purified.<sup>364</sup> In this way, states Vacarius, just as they are among men, so are they seen by God: God sees them in their purity and impurity at the same time.<sup>365</sup> Vacarius thus inverts Speroni's understanding of the 'eternal present' by observing God's knowledge of both good and bad.

A further problem with Speroni's concept of double justice, Vacarius observes, is that it excludes consideration of sin, in the sense understood by orthodox theologians as a sin before God. Thus, the elect may be sinners,

<sup>362</sup> 'Iste namque divisus est, ut alius sit interior et alius exterior, cum in eodem homine mundicia et immundicia simul esse non possunt, sive corporales sint, nisi in homine uno duo homines sint, alter interius et alter exterius': *Liber contra*, §8 [2], p. 498.

<sup>363</sup> 'Nam omnis immundicia sicut apud homines, ita apud Deum immundum facit, ut omnis qui apud homines immundus est, et apud Dominum; ergo etiam omnes ad vitam eternam predestinati': *Liber contra*, Prologue, [C], p. 476; 'Secundum predicta itaque etiam in conspectu Dei simul mundi et immundi neces[s]ario fuerunt': *Liber contra*, §12 [4], p. 509.

<sup>364</sup> 'Nam sicut iustificationes iustorum, ita et scelera eorum in conspectu Domini semper certa, tamquam presentia, fuerunt': *Liber contra*, §12 [1], p. 506.

<sup>365</sup> 'Et sicut apud homines, ita apud Deum a sua immundicia, qua in veritate immundi erant et mortui et potestati diaboli subiecti, eodem momento mundati fuerunt': *Liber contra*, §12 [1], p. 506.

adulterers, or criminals, but, for Speroni, they are not judged sinners before God. Such an outward (*extrinsecus*) conception of sin, concludes Vacarius, does not correspond to the language of Scripture and is wrong.<sup>366</sup> Vacarius, in highlighting Speroni's perception of divine foreknowledge as incomplete and selective, demonstrates a far more sophisticated understanding of this theological concept. His understanding is implicit, however, since he nowhere uses the term perfect divine knowledge.<sup>367</sup>

Consistent with this emphasis on works, Vacarius rejects a contention by Speroni that merely abstaining from evil, rather than performing positive acts, achieves justification.<sup>368</sup> Vacarius counters, instead, that one deserves eternal life and justification for one's good works.<sup>369</sup> He ponders how it can be that someone who is not delinquent merits eternal life more so than someone who preaches and prays. For that person is performing good works and ought to receive reward according to his labours, so that his works justify and attribute to each his due.<sup>370</sup> In contrast, Speroni's concept of a fixed and immutable state for the pre-destined elect to justification allowed no role for works.

Vacarius disagrees with Speroni's concept of the elect being in a fixed and determined state of justice; instead, he posits the idea that this is a state of progression and merit. Vacarius quotes scriptural authority in support of the orthodox Catholic doctrine that it is not the beginning, but the end, which matters, even though there be variation in between. It is the final state of the soul, at the end of its earthly life, which matters in terms of one's state of justice, that is, whether one will be saved or damned.<sup>371</sup> Vacarius illustrates this concept of perseverance, distinguishing two kinds of Christians: those whose good

<sup>366</sup> *Liber contra*, § 12 [II–2], p. 507.

<sup>367</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 207.

<sup>368</sup> Speroni's arguments refer to avoiding the proscriptions of the Decalogue: *Liber contra*, §30 [I], p. 562; cf. Prologue, [I], p. 481.

<sup>369</sup> '[Q]uia bona operatur, mercedem secundum suum laborem recipiet, per eam iusticiam, que sic operantes iustificat, cuique suum meritum tribuens': *Liber contra*, Prologue, [I], p. 481.

<sup>370</sup> 'Si ergo iste, quia non delinquit[ur] vitam meretur eternam, multo magis ille qui predicat, qui orat, quia bona operatur, mercedem secundum suum laborem recipiet, per eam iusticiam, que sic operantes iustificat, cuique suum meritum tribuens': *Liber contra*, Prologue, [I], pp. 480–81.

<sup>371</sup> '[N]on initium attendere debemus, sed finem, quamvis in medio sit variatum; et hoc est quod dicitur: *Qualem te invenero*, scilicet in fine, *talem te iudicabo*. Hec autem de ultimo iudicio intelliguntur, quod pertinet ad perpetuam salutem vel damnationem': *Liber contra*, §31 [3], p. 567. The italicized quote is not from the Gospels, but from St Justin's dialogue with Trypho the Jew: *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 213.

conduct made them part of the community and family of Christians; and those whose education and exterior profession of faith made them part of this Christian number, but who lived depraved lives. The latter, Vacarius concludes, cannot be counted as belonging spiritually to the Christian family, unless they purify themselves of sin by confession.<sup>372</sup> Continuing this theme of merit and works, Vacarius points to the 'book of life'. In this the predestined were listed by God. One became listed in this book if one led a just life, but deleted therefrom if they sinned.<sup>373</sup> Vacarius, in this way, rejects the notion of a fixed and immutable class of elect being entitled to justification.

Vacarius sets out his understanding of predestination. He reminds Speroni that, before one can desire purity, even internally, one is given by grace the desire to seek purity; in this way one can free oneself from impurity.<sup>374</sup> Like a slave given freedom in a will, he suggests, the 'internal purpose' to which Speroni refers to in the predestined elect is nothing other than this testamentary gift, namely a disposition and a destination.<sup>375</sup> Vacarius's illustration refers to the Romano-Justinianic concept of *manumissio testamento*, the liberation of a slave by operation of the last will of his master. In this way, Vacarius states, predestination is nothing other than a 'preparation for grace'.<sup>376</sup> Vacarius here adopts the Augustinian definition of predestination as a 'preparation for grace' (*gratiae preparatio*), that is, not as grace itself, but as the perseverance towards grace and its glory.<sup>377</sup> Most scholars of the twelfth century, including Hugh of St Victor and Peter Lombard, accepted Augustine's notion of predestination.<sup>378</sup>

<sup>372</sup> *Liber contra*, §31 [3], p. 568; *L'Eresia di Ugo Speroni*, ed. by Da Milano, pp. 213–14.

<sup>373</sup> 'Nam propter iusticiam vite eius [...] qui sunt scripti in libro vite [...] De quo libro post peccatum nomina eorum delentur': §31 [4], p. 569; *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 215.

<sup>374</sup> 'Nam antequam quis munditiam diligat, ei gratia datur ut eam diligat, ut per eam ab immundicia liberetur': *Liber contra*, §8 [3], p. 499.

<sup>375</sup> 'Hoc modo dicitur etiam libertas dari in testamento. Nichil enim aliud est talis datio, quam dispositio et destinatio quedam': *Liber contra*, § 12 [4], p. 509.

<sup>376</sup> 'Sic est enim intelligere illa gratie dacio *ante tempora secularia* facta, scilicet predestinatione dumtaxat': *Liber contra*, § 12 [4], p. 509; 'Et quia predestinatio nichil est aliud quam gratie preparatio': § 31 [4], p. 569.

<sup>377</sup> 'Illaec est predestinatio sanctorum nihil aliud: praescientia scilicet et preparatio beneficorum dei, quibus certissime liberantur, quicumque liberantur': St Augustine, *De corruptione et gratia*, c. 9, 20, in PL: 44, col. 1014. See discussion in *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 217, n. 1.

<sup>378</sup> 'Ut enim ait Augustinus in libro De predestinatione sanctorum, *praedestinatio est gratiae praeparatio, quae sine praescientia eses non potest*': Peter Lombard, *Sententiae*, 1, d. 11, in

In this way, Vacarius distinguishes the 'order of execution', namely the real and temporal cause of predestination, and the 'order of intention', namely the ideal, transcendent, eternal, and antecedent cause of predestination.<sup>379</sup> Speroni made no such distinction, and, in this way, Vacarius recognizes that Speroni's notion of 'interior purpose' erroneously makes no allowance for human will in the process of predestination and justification.<sup>380</sup>

Speroni's concept of double predestination was not reflective of twelfth-century views, although it resembled Gottschalk's ninth-century ideas on predestination.<sup>381</sup> But, whereas Vacarius allows justification for those 'predestined to life' (*ad vitam praedestinatus est*), he elucidates that it does not conversely follow that others are predestined to damnation; the latter are merely 'foreknown to damnation' (*ad damnationem a Deo praescitus* or *praescitus ad mortem*).<sup>382</sup> This acknowledgment that one could not be condemned to eternal death by a positive decree of God was consistent with Catholic doctrine of the time.<sup>383</sup> According to

*Sententiae in IV libris distinctae*, ed. by Brady, II, pp. 114–18; cf. I, d. 35, c. 1 (I, p. 254); cc. 1–6 (I, pp. 254–55); c. 7–9 (I, pp. 254–55); d. 36, cc. 1–5; d. 41, c. 3 (I, pp. 258–63, 293). 'Praedestinatio est gratiae praeparatio. Propositum ergo Dei in quo gratiam electis suis dare disposuit ipsum est praedestinatio, quae idcirco praedestinatio vocatur': Hugh of St Victor, *De sacramentis Christianae fidei*, I, 2, c. 21, in PL: 176, cols 213; cf. 1.2.14–18, 19–21, pp. 211–D–213B–D. See also Honorius, *Elucidarium*, 1.13, 15, 21–31, in *L'Elucidarium et des lucidaires*, ed. by Lefèvre, pp. 363, 413–16; Robert Pullen, *Sententiarum libri octo*, 1.13–16, in PL: 186, cols 700B–702C, 708D–710C, 714B–718B; *Summa sententiarum*, 1.12, in PL: 176, cols 61C–62C, 63A–64D; Roland of Bologna, *Sententiae*, in *Die Sentenzen Rolands*, ed. by Gietl, pp. 62–67, 67–84; Robert of Melun, *Sententiae*, 1.2.2–3, in *Oeuvres de Robert de Melun*, ed. by Raymond M. Martin and R. M. Gallet, *Spicilegium Sacrum Lovaniense, Études et documents*, fasc. 13, 18, 21, 25; 3 vols in 4 (Louvain: Spicilegium Sacrum Lovaniense, 1932–52), III, part 1, p. 265; 1.6.20, III, part 2, pp. 315–16; 1.7.33–36, III, part 2, pp. 315–16. See also Colish, *Peter Lombard*, I, pp. 279–90.

<sup>379</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 217.

<sup>380</sup> Vacarius does not choose to focus on Speroni's apparent denial of Augustine's idea of the absolute gratuity of predestination and John of Damascene's conception of the universal salvific will of God: *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 196.

<sup>381</sup> *Histoire des conciles d'après les documents originaux*, ed. by C. J. Hefele, and cont. and trans. by H. Leclercq and others, 11 vols in 22 (Paris: Letouzey et Ané, 1907–52), IV, part 1, pp. 137–235; P. Godet, 'Gotescale ou Gottschalk', in *Dictionnaire théologie catholique*, ed. by Vacant and others, VI, part 2, pp. 1500–02; B. Lavaud, 'Prédestination', in *Dictionnaire théologie catholique*, ed. by Vacant and others, XII, part 2, pp. 2901–35; *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 199, n. 1.

<sup>382</sup> *Liber contra*, §31 [IV], p. 568.

<sup>383</sup> *L'Eresia di Ugo Speroni*, ed. by Da Milano, p. 198.

Peter Lombard, who summarized the standard late Augustinian teaching on predestination, foreknowledge (*praescire*) was not causative, while predestination (*praedestinare*) was insofar as it related to God's direct decision or decree to extend the grace of preparation and perseverance to those people He chose to save.<sup>384</sup> From this notion of predestination as a preparation for the grace of God, Vacarius affirms that predestination does not automatically entail justification.

Linked to Vacarius's ideas on justification are his responses to Speroni's rhetoric on the notion of Christian sanctity. Speroni argued that only a select few had the sanctity to call themselves true Christians, much less priests: these were the 'good'; those who had the 'spirit of God';<sup>385</sup> the 'perfect';<sup>386</sup> and those who had the 'law of God' in their heart.<sup>387</sup> Vacarius responds, much as he does in regard to arguments on unworthy priests and interior faith, that there are both good and bad Christians in life. Scripture, he observes, proves that God loves even those who have too little charity and who are inimical to him as 'children of wrath'. In different ways, God invites these people to salvation, but He does not make them.<sup>388</sup> As for the notion of having God written in one's heart, Vacarius states that, on the basis of parables like that of chaff being mixed in with the grain, or the five foolish mixed with the five clever virgins, there is nothing now hidden which will not be revealed in the final judgment of Jesus Christ.<sup>389</sup> That is, the Final Judgment would determine who indeed were true Christians.

<sup>384</sup> Peter Lombard, *Sententiae*, I, d. 39, c. 4.3, in *Sententiae in IV libris distinctae*, ed. by Brady, I, p. 284. Against this consensus, Abelard attempted to recast this theme into the logical problem of necessity, possibility and future contingency: Peter Abelard, *Logica "Ingredientibus"*, in *Philosophische Schriften*, ed. by Bernhard Geyer, 21 vols (Münster: Aschendorff, 1919–27), XXI, part I, pp. 26–27. See also Colish, *Peter Lombard*, I, pp. 271–75, 288.

<sup>385</sup> *Liber contra*, §21 [I], p. 544.

<sup>386</sup> '[Q]uasi non possit esse christianus, nisi perfectus, id est filius Dei': *Liber contra*, §21 [III–3], p. 546.

<sup>387</sup> *Liber contra*, §22 [I], p. 546.

<sup>388</sup> 'Eos itaque qui cum sapientia habitant diligit, quia eorum petitiones exaudit. Filios autem ire diligit, quando eos ad fidem et caritatem convertit. Omnes etiam diligit, quia eos ad salutem invitat; hoc eis non faceret, nisi eis bonum vellet, id est ad salutem': *Liber contra*, §21 [I], p. 545; Wisdom 7. 28 (Old Testament Apocrypha).

<sup>389</sup> 'Nonne in tota presenti vita palea cum granis mixta est, [...] Nonne simile est regnum Dei X virginibus, quarum V sunt fatue? [...] [I]n consumatione administracionis Ihesu Christi locum habebunt, [...] quia nichil modo secretum est quod tunc non sciatur': *Liber contra*, §22 [2], p. 547.



Consistent with his notion of interior faith and the inefficacy of works, Speroni also espoused the idea that faith alone sufficed for one to be called a true Christian.<sup>390</sup> Allied to this view, he posited the notion that *consortium* ('association') or love in Christianity, rather than merit, brought sanctity.<sup>391</sup> Vacarius is at pains to highlight his recognition that this notion of *consortium* as defining Christianity is completely at odds with Speroni's previous argument that only the 'perfect' could be Christians. Speroni cannot have it both ways; how, Vacarius asks, can someone be a Christian at one moment and the next not? This was, to put it bluntly, a ridiculous argument.<sup>392</sup>

Vacarius opposes Speroni's flawed ideas with the orthodox Catholic doctrine of justification, according to which man had to co-operate in the completion of his own justification. His doctrine was not new; it reflects the late Augustinian reception of that theological concept. But, in addition, Vacarius has recourse to the primary authorities of faith, that is, Scripture, to support his arguments of orthodoxy. In certain cases he additionally uses civil law analogies to add immediacy and practical exemplification to otherwise wholly speculative concepts.

### Aids to the Christian Life

Speroni's espousal of a faith of interiority led him to reject most external manifestations of faith in the medieval western Church. His arguments particularly resonate with his previous objections to the liturgical elements of the Mass, and the 'temples made by hands'.<sup>393</sup> His focus was on aids to the Christian life, namely ecclesiastical buildings, objects, and feast days. Vacarius, in contrast, affirms the role of these Christian aids in their general utility for the Church; he also defends the role of each in more specific terms.

Speroni argued that such things were divine and ought not be owned by the Church; similarly he posited that it was inappropriate to sanctify inanimate

<sup>390</sup> *Liber contra*, §21 [III–3], p. 545; cf. §21 [II–2], p. 545.

<sup>391</sup> '[I]d est in Christi dilectione, de populo tamen Christi est vere appellatur [christianus] ratione consorcii': *Liber contra*, §21 [III–3], p. 546.

<sup>392</sup> 'Ridiculum est enim dicere: In hac hora est iste christianus; et continuo, id est in sequenti hora: Non est christianus; in qua factus est malus, homicidia vel adulter': *Liber contra*, §21 [III–3], p. 546.

<sup>393</sup> *Liber contra*, §19 [1], [c], p. 429.

objects.<sup>394</sup> Vacarius, on the other hand, affirms the need for Church buildings and property. First of all, Vacarius begins, the Romano-Justinianic *Code* recognizes *res sacrae* (sacred things) as a category of property once they were consecrated by a pope.<sup>395</sup> In this way, God ‘has his own property’ once He ‘lives’ in them; thus, churches are God’s and ought be venerated and sanctified for this reason.<sup>396</sup> Further, he argues, the temples and churches are special places where God is especially present. For, although God is everywhere, He is more keenly present in sacred places, as according to Scripture. Vacarius writes of God’s presence as a ‘*quasi* soul and body’, a probable reference to the real presence in the Eucharist.<sup>397</sup> Vacarius’s reference to Scripture, particularly Isaiah, is aimed at establishing that the consecration and dedication of buildings, such as churches, is a legitimate means of integrating the internal and external religiosities to which Speroni referred. This integration is by means of the works in building the structures.<sup>398</sup>

To Speroni, the observance of ecclesiastical feasts was another external ecclesiastical ritual worthy of criticism. It was Speroni’s principal contention that love alone, without works, sufficed to fulfil the ‘law of Christ’; as he argued elsewhere, this was because the New Testament freed man from servitude to the Old Testament rituals, requiring only *dilectio* or love.<sup>399</sup> Consistent with his

<sup>394</sup> *Liber contra*, §14 [III–3], p. 514; cf. Speroni’s references to the wood (*ligna*) and stones (*lapides*) of Solomon’s temple and the gold and silver treasury therein: *Liber contra*, §14 [II–2], p. 514. See also his arguments that external manifestations of religiosity did not conjoin with spiritual religiosity, based on Isaiah 66. 1: *Liber contra*, §14 [IV–5], p. 515.

<sup>395</sup> ‘Ibi enim docetur quod hec res proprie sunt divini iuris, que rite per pontificem Deo sunt dedicate, et dicuntur res sacre’: *Liber contra*, §14 [III–3], p. 514. Vacarius, earlier in the treatise, discusses *res sacrae* in the context of priestly conduct as pertaining to the common good (*utilitas*), whereas here he sticks to the traditional interpretation of *res sacrae* as merely a category of property: *Liber contra*, §28 [1], p. 558. See Part II, above, on the clergy’s separation from the laity.

<sup>396</sup> ‘[Q]uoniam in eis Deus habitabat et eius propria erant, multo magis nostra sancta sunt veneranda’: *Liber contra*, §14 [IV–5], p. 515.

<sup>397</sup> ‘Quasi ego qui ubique communiter sum, ergo et ibi, specialiter ero ibi corpore quasi et animo’: *Liber contra*, §14 [III–3], p. 515; 1 Kings 9. 3; Isaiah 1. 10–13. See *L’Eresia di Ugo Speroni*, ed. by Da Milano, p. 393.

<sup>398</sup> ‘Ideo sequitur: *Super quem requiescet spiritus meus nisi super humilem et quietum?* [...] Non sufficit templum sine bonis studiis’: *Liber contra*, §14 [IV–4], p. 515; cf. Isaiah 66. 2. See *L’Eresia di Ugo Speroni*, ed. by Da Milano, p. 394.

<sup>399</sup> *Liber contra*, §27 [I], p. 553; [II], p. 554; [VII], p. 557.

earlier responses, Vacarius repeats the message that love alone does not suffice without works.<sup>400</sup>

Vacarius is required to respond in detail to some of Speroni's arguments. For example, it would seem that Speroni misconceived the nature of feast days, for Vacarius has to explain that they are not instituted for the purposes of sanctifying the daylight of that day or because a saint died. Rather, he continues, these days are set aside because the Church itself appointed a certain day to be spent in singing hymns and psalms, and celebrating other festivities, which went from morning to night.<sup>401</sup> And although it is true, as Speroni alleged, that Scripture is silent regarding their observance, the New Law of *dilectio* acknowledges that love without works is useless.<sup>402</sup> Speroni also appeared to confuse Lent with other feasts involving a period of fasting, such as the feasts of St John the Baptist, St Michael, and the Nativity.<sup>403</sup> Speroni suggested that there should be 'three Lents', an error Vacarius gently corrects by reminding him of the differences between them.<sup>404</sup> Of particular note is Vacarius's apparent incredulity that Speroni has forgotten that such feast days, in particular the Lord's Day or Sunday, had been instituted by Justinian's laws.<sup>405</sup>

These everyday liturgical and ritualistic aspects of the Church receive comparatively brief attention in Vacarius's treatise. Indeed, Vacarius's arguments are largely uncontroversial and little more than a restatement of liturgy and catechism; they needed only to be laid out, with little substance, in order to disprove Speroni's own views. The fact, then, that Vacarius deals with them at all is significant. Obviously, Vacarius includes Speroni's arguments so as to ensure an exhaustive response. Vacarius's answers do indicate, however, a familiarity with, and responsiveness to, the practical procedures of the everyday Church. This is in concert with a sufficient level of abstractedness to respond consistently with theological and exegetical understandings of orthodoxy. This, in turn, demonstrates Vacarius's concern for the pastoral aspects of clerical life

<sup>400</sup> *Liber contra*, §27 [1], pp. 553–54; [2], pp. 554–55; [3], pp. 554–55; [7], pp. 557. See also [H], p. 480.

<sup>401</sup> *Liber contra*, §27 [4], p. 555.

<sup>402</sup> 'Dilectio enim, idest caritas, ociosa, hoc est sine operibus': *Liber contra*, §27 [6], p. 557.

<sup>403</sup> *Liber contra*, §27 [V], p. 557.

<sup>404</sup> *Liber contra*, §27 [5], p. 557.

<sup>405</sup> 'Miror, cum tu sis peritu si oblitus es imperatoris nostri Iustiniani et constitutionis eius, que diei Dominici sanctitatem auxit': *Liber contra*, §27 [4], p. 555; cf. *Code*, 3.12.9 (11), p. 128; 3.12.6 (7), p. 127.

and the need to justify and explain even the material and formal paraphernalia which were part of Church life.

### *Final Conclusions*

Vacarius's *Liber contra* is a near-exhaustive rebuttal of Speroni's heterodox arguments on the sacraments of holy orders, baptism, the Eucharist, penance, and confession. It also counters his erroneous views on sacrament-related theological matters, such as justification, original sin, predestination, works, sanctity, and aids to the Christian life. The methodology Vacarius applies to these subjects is, in part, legal. He applies these legal analogies where he sees their value in exemplifying and illustrating his argument, as well as appealing to the common legal language he shares with Speroni. But this is not at the expense of biblical exegesis; rather it enhances it. Vacarius's grasp of theology is based on a sound understanding of the *Glossa ordinaria* which had recently completed its coverage of the entirety of the Bible by the mid-twelfth century. He also applies orthodox theology, although in conjunction with matters falling loosely within the domain of Gratian's *Decretum*.

As we have seen from Winroth's findings, the *Decretum* was no 'pure' work of canon law; in this same way, Vacarius's *Liber pauperum* is no work of pure Roman law, nor is his *Liber contra* pure exegesis. In this sense, Vacarius exemplifies the paradigm of the 'lawyer-theologian': he applies the lawyer's rigorous dialectic and forensic examination of argument, but with a sensitivity to, and a deep knowledge of, both theology and exegesis. Speroni fell short of this standard; his method lacked the primary legal measure of rigour — it was uninformed by the same sense of authority. This lack of cognisance of authority led to his uninformed — or naive — reading of Scripture.

As we have already seen in connection with the *Tractatus de assumpto homine*, Vacarius's strong grounding in orthodoxy in the *Liber contra* is of a different order from much of the polemic which characterized treatises on orthodoxy in the twelfth century. His meticulous and ordered account of the arguments of Speroni is as thorough as it is unemotive and objective. He labels Speroni a 'heretic' only once, but in telling fashion: at the point in Speroni's treatise in which he rejects confession and the Eucharist as efficacious in purging sin. Here,

Vacarius also points out that his status as 'leader and master' of heretics made him guilty of breaching Justinian's *Code*.<sup>406</sup>

In this way, Vacarius's *Liber contra* adds a new level of opprobrium to the anti-heretical arguments of Alain of Lille's *Contra haereticos* and the apologetic handbooks that were to follow in the later twelfth century. This opprobrium is the law, correctly interpreted in accordance with the true faith; that is, the concept of the European Common Law, which, at the time Vacarius wrote his *Liber contra*, still had not separated itself from theology, morality, and philosophy.

<sup>406</sup> *Liber contra*, §31 [V-5], p. 569.



## CONCLUSION

It has been the argument of this book that Vacarius deserves re-evaluation as a lawyer-theologian and as a *ius commune* lawyer. His contribution to twelfth-century debates on legal and theological matters represents a unique approach, informed by a practical and pastorally-oriented scholasticism.

The first chapter of this book examined Vacarius and his teaching of law. Through his textbook, the *Liber pauperum*, specifically designed for English students needing an overall understanding of law, and which Vacarius almost certainly designed as a teaching aid in the environs of Oxford, a picture of Vacarius's jurisprudence emerged. This jurisprudence, I argued, was a part of the twelfth century *ius commune*, which encompassed both canon and Roman law; further, it related to society at large. A flexible, relativist methodology emerged in Vacarius's legal teaching, a pedagogy which was akin to universal grammar and so applicable to law and theology.

Such universality was seen again in Vacarius's work on marriage, which I examined in the second chapter. This time the issues were those raised in connection with canon law. To many scholars, Vacarius's *Summa de matrimonio* offered a 'third way' to either the consensual theory advocated by Peter Lombard, or the consummation theory posited by Gratian and Rufinus. My analysis, however, revealed that the notion of *traditio* was closely linked with the notion of consent in marriage, the *affectio maritalis*. As such, Vacarius used this traditional Roman law notion as a heuristic tool in order to analyse the two models of marriage. For Vacarius, the *traditio* represented the hypothetical legal moment when marriage was formed, free from the canonistic conceptions of *matrimonium initiatum*, *perfectum*, or *ratum*. Further, he recognized that such a concept revealed more truly the legal rationalisation for separation. This was not so much dependent, as Gratian and Rufinus would have it, on whether

sexual consummation had taken place, but whether, Vacarius argued, the marriage had been legally completed on a *traditio*-type analysis. For Vacarius, this concept was consistent with the sacramentality of marriage and offered a solution to the marriage of the Blessed Virgin Mary. I argued in this chapter that Vacarius employed universal principles of legal analysis, this time through a Roman law concept, which reconciled theological and canonical concerns.

In the third chapter of this book I examined Vacarius's christological thought, a detailed study of which previously has never been attempted in relation to Vacarius. I began with a discussion of both the Parisian, Lombard-inspired debates, and the more polemical *aliquid-est* conciliar scholastic debates on the hypostatic union in the mid- to later-twelfth century. Through a close reading, first of the *Tractatus de assumpto homine*, I placed Vacarius in these context of these debates. I argued that Vacarius was closely aligned to those theologians who were identifiable with the *assumptus homo* explanation of the incarnation. In this way, his christology conformed with the consensus of scholastic and papal opinion. But within this apparent consensus, my analysis revealed that Vacarius's expression of orthodoxy retained its own characteristic stamp. Vacarius was preoccupied with the notion of a corporeal form or body being constitutive of, and identifiable with, Christ. The miraculous personal union for him offered a solution which no dissenting argument could shake. The idea of a separate body and soul, or a divine nature alone, could not explain for him the inherence of the human properties in Christ and Christ's 'perfect nature'. This was explicable for Vacarius in the personal union of the *assumptus homo* in Christ. Beyond this doctrinal conformism, Vacarius adopted a legal methodology to theology. The legal character of this approach did not manifest itself through Vacarius's adoption of legal similes or phrases, but through a sober and even-handed dialectic.

The second part to this chapter compared the approach Vacarius had taken in the *Tractatus de assumpto homine* with the final section of the *Liber contra*. He had returned to the issue of the hypostatic union in this work, although as a largely digressive discussion in response to Speroni's polemical anti-sacerdotal and anti-sacramental piece. A unity of approach with the *Tractatus de assumpto homine* was evident in regard to the still-controversial issue of the hypostatic union; Vacarius maintained the approach adopted by proponents of the *assumptus homo* doctrine. But the methodology was very different in this work. Instead of the more speculative and theoretical approach of his earlier work, Vacarius employed the heuristic device of a prominent patristic authority, 'Jerome'. This gave his arguments in the *Liber contra* a sense of authority which



was lacking in the earlier *Tractatus de assumpto homine*, in which he had instead relied on the little-known Claudianus Mamertus. The focus here was more pastoral and instructive than speculative, consistent with Vacarius's overall design to provide an apologist's account for acceptance of the sacrament of the Eucharist.

I concluded in this chapter that Vacarius's works are not so remarkable for taking a conservative and consensual line on christology, but rather for the manner in which he outlined such ideas. His use of Roman law analogies, canon law, and biblical exegesis, as well as speculative theological language, demonstrated a mind of intellectual flexibility and an ability to apply a method of universal application.

The fourth chapter examined Vacarius's *Liber contra* in more detail, in which he dealt with the sacraments of holy orders, the Eucharist, and baptism, and the related theological concepts of Original Sin, justification, works, and ecclesiology. The *Liber contra* was different in character from Vacarius's two earlier works in that it was composed for a specific polemical purpose and for a certain individualistic audience, who was identified by name. Hugo Speroni, heresiarch and consul of Piacenza in the mid-twelfth century, had been educated in the Bolognese schools like Vacarius. But whereas Speroni used his legal training to formulate (what were in Vacarius's eyes) erroneous ideas on Christian doctrine, such as his refusal to allow morally unworthy priests to play a role in the Church, especially in connection with baptism and the Eucharist, Vacarius used Roman law analogies to enforce a greater sense of orthodoxy. This was particularly the case in Vacarius's response to Speroni's arguments on justification and Original Sin. To many scholars, it would have seemed ill-fitting to use Roman law in a theological context. To Vacarius, however, their use was far from inappropriate. In highlighting to Speroni the errors of his thoughts, including the heresiarch's notion of a pre-determined and fixed predestination that no amount of charitable works could assist, Vacarius — as in the marriage treatise — used civilian concepts analogously to elucidate a consensus position. This was particularly apt in regard to the principal theological issue at stake: the effectiveness of the sacramental action of the morally unworthy priest. Consistent with his use of Roman law analogies, however, Vacarius used dialectic and logical ratiocination as intrinsic aspects of his legal methodology, which sought to resolve conflict through biblical exegesis and theological dialogue, both of which were informed by this legal understanding.

Despite the intellectual nature of this contest with his former schoolfriend, Vacarius was additionally concerned with the everyday matters of the Church,

which were also subject to attack by Speroni. For Vacarius, these included works, such as circumcision and confession; the liturgy of psalms, prayers, and hymns; the outward signs of ecclesiastical identification, such as the cross and images; and Christian religiosity itself. All were vital to the Church and ecclesiologically justifiable, according to Vacarius.

This study has provided a window into the intellectual machinations of a figure whom I have shown was a typical *litteratus* of the twelfth century. Whilst his works traditionally have been seen by scholars as having little worth in the wider understanding of medieval law and theology, I hope to have demonstrated the unique perspective Vacarius offered on these disciplines. His perspective was not so much doctrinal as heuristic. That is, Vacarius adopted an approach to resolving problems and disputes which was fundamentally informed by two ideals. One was the search for 'truth' by the universal application of legal science, whether in theology or sacramentology. This universal pedagogy was inspired by his civil law background, but by no means confined to it. Second, and linked to this aspiration for wisdom through informing and instructing, Vacarius's approach was characterized by a concern for practical pastoral needs. In a period of enormous social, cultural, and intellectual change, Vacarius stood as an exponent of the 'new' disciplines of law and theology, although he determined to use them to protect and maintain the status quo rather than change it.

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